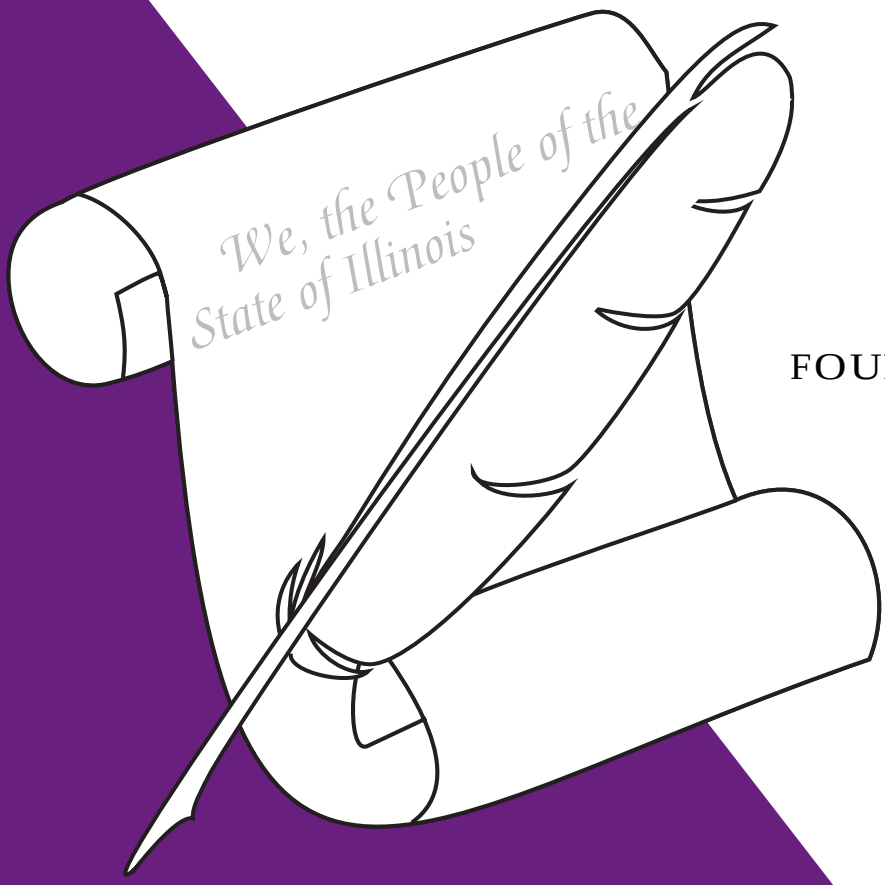
1970 ILLINOIS CONSTITUTION

ANNOTATED FOR LEGISLATORS



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1970 Illinois Constitution Annotated for Legislators

4th Edition, updated 2005

Written by
David R. Miller
Senior Staff Attorney and
Deputy Director for Research

Publication 314

CONTENTS

INTRODUCTION

This publication includes the text of the 1970 Constitution as amended through the November 2004 election (in boldface); commentary describing relevant court decisions, laws, and Attorney General's opinions; and a detailed index to the Constitution's text. Since it is written primarily for legislators, it emphasizes the constitutional structures of state and local government; legislative powers and procedures; and limitations on statutes. But we believe that, like its predecessor editions, it will be a useful reference work for persons in all three branches of Illinois government.

The idea of publishing an annotated Illinois Constitution was conceived by Associate Director Gerald L. Gherardini and sponsored by Senator Dawn Clark Netsch in 1979. To some degree it carries forward the work of George D. Braden and Rubin G. Cohn in *The Illinois Constitution: An Annotated and Comparative Analysis* (1969), which served as a comprehensive guide for delegates at the 1970 constitutional convention. A more direct model is the Congressional Research Service's *The Constitution of the United States of America: Analysis and Interpretation* which is periodically updated for use by members of Congress.

This publication was written in 1996 by David R. Miller, Deputy Director for Research, who updated it with major developments for this 2005 edition.

Patrick D. O'Grady
Executive Director

PREAMBLE

We, the People of the State of Illinois—grateful to Almighty God for the civil, political and religious liberty which He has permitted us to enjoy and seeking His blessing upon our endeavors—in order to provide for the health, safety and welfare of the people; maintain a representative and orderly government; eliminate poverty and inequality; assure legal, social and economic justice; provide opportunity for the fullest development of the individual; insure domestic tranquility; provide for the common defense; and secure the blessings of freedom and liberty to ourselves and our posterity—do ordain and establish this Constitution for the State of Illinois.

Article 1. Bill of Rights

The Bill of Rights contains many protections for persons against actions by the state and its subdivisions, including local governments. Some of the antidiscrimination provisions also apply to private businesses. Many sections of Illinois' Bill of Rights are based on provisions in the U.S. Constitution. In addition, the U.S. Supreme Court has held that most provisions in the U.S. Constitution's Bill of Rights apply to states through the U.S. Constitution's Fourteenth Amendment, which prohibits states from depriving any person of life, liberty, or property without due process of law. But the Illinois Bill of Rights is significant because a few of those federal protections do not apply to state governments, and some of the Illinois protections go beyond the scope of federal ones that do apply.

SECTION 1. INHERENT AND INALIENABLE RIGHTS

> **All men are by nature free and independent and have certain inherent and inalienable rights among which are life, liberty and the pursuit of happiness. To secure these rights and the protection of property, governments are instituted among men, deriving their just powers from the consent of the governed.**

These familiar words from the Declaration of Independence have appeared in some form in each of Illinois' four Constitutions (1818, 1848, 1870, and 1970). They are treated as mostly hortatory, stating ideals rather than setting specific standards. But the courts have in a few cases cited them, along with other constitutional provisions, in striking down laws that unreasonably prohibited or restricted occupations, such as a plumber licensing law that allowed master plumbers to determine how many persons could become plumbers[1] and a law prohibiting the making of industrial coils and springs at home when no danger from the practice was shown.[2]

SECTION 2. DUE PROCESS AND EQUAL PROTECTION

> **No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws.**

Due process

"Due process of law" is an exceedingly broad principle. It includes the right to have decisions that affect oneself made by established procedures that are designed to be fair ("procedural due process") and also sometimes the right to be free from unwarranted government coercion ("substantive due process"). Due process requires among other things that a law, especially a criminal one, give adequate notice of what conduct it prohibits;[3] that persons who are to be adversely affected by an administrative or judicial action be given notice and an opportunity to be heard in opposition;[4] and that the hearing not be biased or otherwise unfair.[5] However, the courts uphold a large majority of laws challenged under due process.

Due process of law was guaranteed by the 1870 Constitution. It is now guaranteed by the U.S. Constitution's Fifth Amendment, which applies to the national government, and by its Fourteenth Amendment which applies to the states.

Equal protection

The guarantee of equal protection of the laws is taken from the U.S. Constitution's Fourteenth Amendment, added after the Civil War. This concept originally was intended to prohibit government from enforcing laws unequally, but has since become more important as a protection against laws that are themselves unequal, discriminating on grounds not related to a valid governmental purpose. Although the 1870 Illinois Constitution did not specifically guarantee equal protection, the Illinois courts long before 1970 had held that the 1870

Constitution's prohibition against "local or special laws" guaranteed equal protection of the laws.[6] The Illinois Supreme Court has said that it uses the same analysis for equal-protection claims under the U.S. and Illinois Constitutions.[7]

A person claiming denial of equal protection generally argues either that (1) two similar persons are being treated differently, or (2) two persons who should be treated differently are being treated alike. To decide such a claim, a court must determine what class or classes the law or other government action has created, and whether those classes are sufficiently related to a constitutionally valid objective. Some cases decided under the old (1870) Constitution said that the legislature cannot, merely by defining terms, cause a class to include persons who in common understanding are not within that class.[8] While those cases may embody a stricter approach to statutes than the courts now employ, they do make an important point: The mere act of defining a term cannot save a statutory classification that violates equal protection.

Rational basis standard

In cases on due process and equal protection, the courts apply differing levels of scrutiny depending on the nature of the interest being protected and (for equal protection) the kind(s) of classification involved. In most situations the courts will uphold a statutory division of persons into classes, or treatment of persons within a class, if the courts can find a "rational basis" for those actions. There need not be a perfect fit between the government objective and the methods used to pursue it; but the method used must have a clear tendency to achieve that objective. Obviously, whether a particular law or governmental action meets this requirement is a matter for judgment rather than a precise standard.[9] As examples, the courts have upheld laws imposing stricter procedural requirements on persons suing governmental bodies than on those suing private persons;[10] distinguishing in medical licensing between physicians trained in the U.S. and those trained elsewhere;[11] setting strict time limits on bringing suits for medical malpractice but not other kinds of suits;[12] and allowing the Chicago Park District to charge nonresidents of Chicago higher mooring fees than residents.[13] (For cases on the rationality of discrimination in taxation, see the discussions following Article 9, sections 2 and 4.)

On the other hand, the Illinois Supreme Court has struck down laws that provided heavier penalties for one crime than for a somewhat different crime that was objectively more serious;[14] a statute of limitations that applied different standards to residents and nonresidents of the state;[15] and a bail law providing that indigent defendants who had posted bail could have their bail money confiscated to pay the public defender, but not requiring indigent defendants who did not post bail to pay defender fees.[16] These laws failed the "rational basis" standard since there was little difference between the two classes of persons involved in each situation, and little reason for treating them differently.

Higher standards

Courts sometimes hold laws to a higher standard than a "rational basis." Under decisions by the U.S. Supreme Court, which are authoritative as to the federal guarantees and serve as guides for the Illinois guarantees, at least two kinds of laws are held to a much higher standard: those that (1) interfere with a "fundamental right" such as freedom of expression, voting, decisions about reproduction, or interstate travel, or (2) discriminate on the basis of a "suspect classification" such as race, ancestry, or (under the 1970 Illinois Constitution) sex.[17] Both federal and Illinois decisions require such laws to have a "compelling governmental purpose" to be upheld.[18] Few survive court challenges.

SECTION 3. RELIGIOUS FREEDOM

The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be guaranteed, and no person shall be denied any civil or political right, privilege or capacity, on account of his religious opinions; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the State. No person shall be required to attend or support any ministry or place of worship against his consent, nor shall any preference be given by law to any religious denomination or mode of worship.

Religious freedom has been guaranteed in all four Illinois Constitutions. The current provision is unchanged except for punctuation from one in the 1870 Constitution. It largely overlaps the protections given by the "establishment of religion" and "free exercise" portions of the U.S. Constitution's First Amendment, which applies to states through the Fourteenth Amendment.[19] In 1910 the Illinois Supreme Court held that prayer and Bible reading in public schools violated this section,[20] preceding by more than 50 years a similar holding by the U.S. Supreme Court. But the courts have not required total separation of the claims imposed by church and state. Illinois courts have ordered a blood transfusion for an infant to save her life over religious objections by her parents;[21] held that a Catholic priest could sue for back salary;[22] refused to condemn the use of public funds to mail a letter from a representative of parochial schools to parents of parochial school students, explaining the benefits to their schools of passing a tax referendum for the public schools;[23] and upheld a Sunday-closing ordinance that in lower Illinois courts was attacked under this section.[24]

Article 10, section 3 also contains a detailed prohibition on use of public funds to aid religious instruction.

SECTION 4. FREEDOM OF SPEECH

All persons may speak, write and publish freely, being responsible for the abuse of that liberty. In trials for libel, both civil and criminal, the truth, when published with good motives and for justifiable ends, shall be a sufficient defense.

Free speech and publication

This guarantee is based on guarantees in earlier Illinois Constitutions and gives protections similar to the free speech and press portions of the U.S. Constitution's First Amendment, which apply to states through the Fourteenth Amendment.[25] It applies only against government restriction of expression, not against restriction by private entities such as proprietors of shopping places;[26] owners of trailer parks;[27] or employers.[28]

Government is allowed to restrict expression by prohibiting misleading professional advertising,[29] limiting political activities by public employees,[30] and prohibiting political contributions by liquor licensees and their officers and employees.[31] However, the principle that laws must contain standards to guide citizens in complying with them has special force regarding measures that restrict expression.[32] There is a heavy burden on those who would impose "prior restraint" on expression (prohibiting it before it occurs); government ordinarily may not impose such restraint, even on offensive expression such as the marching of Nazis with swastikas.[33]

A government body may not impose disciplinary measures on one of its employees for comments on public matters that are not shown to be false and to impair the effectiveness of the employee or the agency, at public meetings,[34] in public gatherings,[35] in a letter to members of a city council,[36] or in comments to the press.[37] But the suspension of a policeman for disclosing information from a police personnel file has been upheld.[38]

Defamation

The second sentence of this section, dealing with libel, is a somewhat outdated carryover from the 1870 Constitution. A series of decisions by the U.S. Supreme Court beginning with *New York Times Co. v. Sullivan* (1964)[39] have held that the U.S. Constitution's First Amendment requires public figures who sue for libel to demonstrate that the statements were false and made with either (1) knowledge of their falsity or (2) reckless disregard for whether they were true or false. The Illinois Supreme Court has held similarly as to public figures and persons involved in a matter of legitimate public interest, such as medical quackery[40] or tenure decisions at a public university.[41] Even as to private figures, the U.S. Supreme Court has held that the burden of showing falsity of defamatory statements on matters of public concern must be on the person defamed.[42]

The Illinois Supreme Court in 1984 held that the standard of "good motives and justifiable ends" was still appropriate in prosecutions for criminal libel of a private person. The court emphasized that the criminal libel law at that time applied only to statements containing "fighting words" that threaten a breach of the peace.[43] But that law was repealed in 1986 and was not replaced.[44]

SECTION 5. RIGHT TO ASSEMBLE AND PETITION

> **The people have the right to assemble in a peaceable manner, to consult for the common good, to make known their opinions to their representatives and to apply for redress of grievances.**

Peaceable assembly and petition are also protected by the U.S. Constitution's First Amendment, which applies to states through the Fourteenth.[45] Although reaffirming the right to assemble peacefully in places that are routinely open to the public, Illinois courts have upheld arrests for demonstrating inside public buildings after normal closing hours,[46] using force to stay in a college building after being told to leave,[47] and attempting to march to an area where police had forbidden marching due to reasonable fears of violence.[48]

SECTION 6. SEARCHES, SEIZURES, PRIVACY AND INTERCEPTIONS

> **The people shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, invasions of privacy or interceptions of communications by eavesdropping devices or other means. No warrant shall issue without probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized.**

The Illinois Constitution's search and seizure provisions are based on the Fourth Amendment to the U.S. Constitution, but the 1970 Constitution added a guarantee against invasions of privacy and eavesdropping. Illinois courts have repeatedly held that this section protects only against government searches and seizures, not against actions by private persons that were not taken at the instigation of police or other government personnel.[49] But this section does not restrict even government personnel in gathering information from public sources. Examples of actions by government that have been held not to violate this section are using public knowledge of an arrest, even though the records of the arrest have been expunged;[50] observing a gun openly visible in a car[51] or having dogs sniff for drug scents coming from airport luggage;[52] observing the vehicle identification number of an automobile;[53] and observing contraband while in a residence for another valid purpose such as rescue.[54] Illinois Appellate Court cases have upheld a statutory requirement that persons convicted of sex offenses listed in the statute give blood samples for testing.[55]

Exclusion of illegally obtained evidence

Under U.S. Supreme Court decisions beginning in 1961, evidence obtained in violation of the Fourth Amendment may not be admitted in state courts against the person(s) whose rights were violated.[56] The Illinois Supreme Court had applied the same rule since 1923.[57] The basic purpose of the Fourth Amendment and this section is to prevent indiscriminate searches of private homes and possessions. Searches and seizures are to be limited to situations in which either (1) an immediate search is required, such as the arrest of a person who might have a concealed weapon, or (2) the police have probable cause to believe a crime has been committed and can persuade a judge to issue a warrant to search a particular place and seize a particular person or thing.

Because this so-called "exclusionary rule" for unconstitutionally taken evidence is designed to discourage police from violating the rights of the innocent—rather than to protect the guilty—the U.S. Supreme Court has fashioned a "good-faith" exception to it. This exception says in essence that if police officers believed in good faith that what they were doing would be held constitutional, evidence they collect should not be barred.[58] One or two Illinois decisions, both by Appellate Court panels, have endorsed such an exception to the exclusionary rule.[59]

Invasion of privacy and eavesdropping

As with the prohibition against unreasonable searches and seizures, this section's protection of privacy applies to government actions, not actions by private persons.[60] The Bill of Rights Committee at the 1970 constitutional convention, which proposed this provision, said it was intended to guarantee each person "a zone of privacy in which his thoughts and highly personal behavior [are] not subject to disclosure or review."[61] But rather than proposing a total ban on interception of communications by government, the committee and the full convention decided to prohibit "unreasonable" interceptions. They specifically said that interception of a conversation for law-enforcement purposes with the consent of the state's attorney and one party to the conversation and the approval of a judge, as provided by law,[62] would not be prohibited.[63] This constitutional section has been held not to invalidate that law.[64]

Illinois courts have held that it is illegal for police, without complying with that law and with the consent of only one party to a phone conversation, to listen in using an extension telephone if its microphone is disconnected[65] (but not if a hand is held over the microphone to muffle sounds from the listener).[66]

This section did not invalidate the Illinois Governmental Ethics Act[67] or a Governor's executive order[68] requiring financial disclosure from various state officials and employees.

SECTION 7. INDICTMENT AND PRELIMINARY HEARING

> **No person shall be held to answer for a criminal offense unless on indictment of a grand jury, except in cases in which the punishment is by fine or by imprisonment other than in the penitentiary, in cases of impeachment, and in cases arising in the militia when in actual service in time of war or public danger. The General Assembly by law may abolish the grand jury or further limit its use.**
>
> **No person shall be held to answer for a crime punishable by death or by imprisonment in the penitentiary unless either the initial charge has been brought by indictment of a grand jury or the person has been given a prompt preliminary hearing to establish probable cause.**

This section allows abolition of the use of grand jury indictments in criminal cases, and provides for a prompt preliminary hearing as an alternative.

Grand jury indictment

A person cannot be held for a serious crime without a grand jury indictment, except to the extent that use of grand juries is limited or abolished by law. In 1975 the General Assembly did limit their use, providing that prosecution for any crime may be begun without a

grand jury. In felony cases a prosecution may be begun by the prosecutor's filing in court of an information (a sworn statement setting forth causes to believe that a person has committed a crime); in less serious cases a prosecution may be begun by either information or complaint.[69] But prosecutors still choose to use grand juries in some cases—particularly those that are controversial, or need the investigatory powers of a grand jury. The requirement in the U.S. Constitution's Fifth Amendment of grand jury indictment for serious crimes does not apply to states.[70]

Preliminary hearing

No person is to be held in jail pending trial for a felony without a determination of probable cause, either by grand jury indictment before arrest or by a preliminary hearing after arrest. The prosecutor may use either method, and a finding of no probable cause at a preliminary hearing does not bar later indictment for the same offense.[71] Furthermore, once probable cause has been found to believe that a person committed any felony, that person can be held and tried for all offenses arising from the same conduct even if they were not charged at the preliminary hearing.[72] Thus this paragraph protects against unjustified detention, not against trial on insufficient evidence.

The major difficulty in applying this section is that it provides no sanction for failure to give a prompt preliminary hearing. The situation is analogous to that of deterring illegal searches and seizures: a court can reverse convictions of persons whose rights were violated, but the guilty are not in the class of innocent citizens whom the rule is designed to protect. A statute now provides that a person taken into custody for a felony must be given a preliminary hearing or be indicted by a grand jury within a specific period, or else be discharged. That period is 30 days if the person is still in custody, or 60 days if out on bail—in each case starting when the person is taken into custody. These periods do not run during delays caused by the defendant or required for examinations into the defendant's competence to stand trial.[73]

SECTION 8. RIGHTS AFTER INDICTMENT

> **In criminal prosecutions, the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation and have a copy thereof; to be confronted with the witnesses against him or her and to have process to compel the attendance of witnesses in his behalf; and to have a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed.**

These rights of criminal defendants after indictment essentially duplicate those in the U.S. Constitution's Sixth Amendment, which applies to states through the Fourteenth Amendment.[74]

The Sixth Amendment does not explicitly state a right to be present at one's trial, but federal decisions have found it implied by the right to confront prosecution witnesses.[75]

Confrontation of witnesses

The Illinois Supreme Court in 1990 upheld Illinois' so-called "rape shield" section that, in prosecutions for serious sex crimes, prohibits introduction of any evidence about earlier sexual activity of the victim—unless such activity was with the defendant. The court emphasized that this law prohibits introduction of such evidence by *either* party because it is irrelevant to the particular defendant's guilt or innocence.[76]

On the other hand, the Illinois Supreme Court held that the statutory "marital privilege," preventing a spouse from testifying about any conversation or communication by either spouse with the other while they were married, was overcome by the constitutional right to confront witnesses, in a case in which a wife, who had testified at trial against her husband, allegedly stated orally and in letters to him that she fabricated her testimony to get light treatment for a crime with which she was charged.[77]

The Illinois Supreme Court in early 1994 struck down a law allowing a young victim of sex crimes to testify out of court and be seen in court on closed-circuit television.[78] The

court said this law violated the original version of this constitutional provision, which gave a criminal defendant a right "to meet the witnesses face to face . . . ." A constitutional amendment approved by the voters in November 1994 replaced the quoted wording with "to be confronted with the witnesses against him or her . . . ."[79] This wording, based on the Sixth Amendment to the U.S. Constitution, was intended to make such a law constitutional. The U.S. Supreme Court in 1990 had cautiously upheld a similar Maryland law against a challenge under the Sixth Amendment.[80]

Speedy trial

The guarantee of a speedy trial is implemented by an Illinois law requiring that a person kept in custody be tried within 120 days after arrest (excluding time taken by delays caused by the defendant, hearings on competence, and the like).[81] Compliance with that law ordinarily prevents a constitutional issue of denial of speedy trial from arising.[82] But the two provisions are not co-extensive, and courts could apply the constitutional provision by looking at the facts to determine whether lack of a speedy trial was for good reasons and whether it prejudiced the defendant.[83]

SECTION 8.1. CRIME VICTIM'S RIGHTS

(a) Crime victims, as defined by law, shall have the following rights as provided by law:

(1) The right to be treated with fairness and respect for their dignity and privacy throughout the criminal justice process.

(2) The right to notification of court proceedings.

(3) The right to communicate with the prosecution.

(4) The right to make a statement to the court at sentencing.

(5) The right to information about the conviction, sentence, imprisonment, and release of the accused.

(6) The right to timely disposition of the case following the arrest of the accused.

(7) The right to be reasonably protected from the accused throughout the criminal justice process.

(8) The right to be present at the trial and all other court proceedings on the same basis as the accused, unless the victim is to testify and the court determines that the victim's testimony would be materially affected if the victim hears other testimony at the trial.

(9) The right to have present at all court proceedings, subject to the rules of evidence, an advocate or other support person of the victim's choice.

(10) The right to restitution.

(b) The General Assembly may provide by law for the enforcement of this Section.

(c) The General Assembly may provide for an assessment against convicted defendants to pay for crime victims' rights.

(d) Nothing in this Section or in any law enacted under this Section shall be construed as creating a basis for vacating a conviction or a ground for appellate relief in any criminal case.

This section was added by an amendment approved by the voters in 1992.[84] Several of the rights it guarantees were already in a law called the Bill of Rights for Victims and Witnesses of Violent Crime Act,[85] but this section could serve as a basis for further laws to protect crime victims.

SECTION 9. BAIL AND HABEAS CORPUS

> **All persons shall be bailable by sufficient sureties, except for the following offenses where the proof is evident or the presumption great: capital offenses; offenses for which a sentence of life imprisonment may be imposed as a consequence of conviction; and felony offenses for which a sentence of imprisonment, without conditional and revocable release, shall be imposed by law as a consequence of conviction, when the court, after a hearing, determines that release of the offender would pose a real and present threat to the physical safety of any person. The privilege of the writ of habeas corpus shall not be suspended except in cases of rebellion or invasion when the public safety may require it.**
>
> **Any costs accruing to a unit of local government as a result of the denial of bail pursuant to the 1986 Amendment to this Section shall be reimbursed by the State to the unit of local government.**

Bail

The Illinois Constitution's guarantee of bail is somewhat similar to the U.S. Constitution's Eighth Amendment, which prohibits excessive bail and applies to the states through the Fourteenth Amendment.[86] The Illinois Supreme Court held that only crimes for which death is a possible penalty are capital offenses for purposes of this section.[87] At present Illinois law allows death to be imposed only for unusually heinous murders.[88] Because of this, a constitutional amendment approved by the voters in 1982[89] and another in 1986[90] allowed courts to deny bail to defendants accused of other violent crimes. The requirement that proof of guilt must be evident or the presumption great was kept. The Illinois Supreme Court had already held that courts may deny bail in other cases if necessary to prevent the defendant from interfering with witnesses or jurors, or carrying out threats.[91]

Habeas corpus

Habeas corpus is the right to have a court order for the release of a person who is being illegally detained. The U.S. Constitution contains a guarantee similar to this section's,[92] but the few cases on the question say that it does not apply to the states.[93]

SECTION 10. SELF-INCRIMINATION AND DOUBLE JEOPARDY

> **No person shall be compelled in a criminal case to give evidence against himself nor be twice put in jeopardy for the same offense.**

This section mirrors two provisions in the U.S. Constitution's Fifth Amendment, both of which apply to states through the Fourteenth Amendment.[94]

Self-incrimination

The privilege against self-incrimination applies in any governmental proceeding, criminal or civil, judicial or quasi-judicial, in which a person might be compelled to testify to incriminating facts.[95] But the privilege applies only if the testimony might bring criminal liability, not if it can have only lesser effects such as loss of a government job.[96] Under federal decisions, the privilege does not extend to the taking of nontestimonial evidence, such as

fingerprints,[97] handwriting samples,[98] or hair or blood samples.[99] The privilege includes the right not to testify at one's trial, and a prosecutor or judge may not adversely comment on a defendant's failure to testify.[100]

The Illinois Supreme Court in 1994 held that the guarantee against self-incrimination was violated when police, who had a suspect in custody, falsely told a lawyer (who was hired by his family to represent him and had gone to the police station looking for him) that they were not holding him, and failed to tell the suspect that a lawyer wanted to talk with him. Thus, the court said, any statements the suspect made after the lawyer arrived at the police station should have been excluded from evidence.[101] This 4-3 decision by the Illinois Supreme Court meant that, as to such facts, this section offers more protection to suspects than the U.S. Constitution's Fifth Amendment guarantee against compelled self-incrimination (because a 1986 U.S. Supreme Court case had held that similar police conduct did not violate the Fifth Amendment[102]).

Double jeopardy

The prohibition on double jeopardy prohibits three major kinds of actions by the state:

(1) After acquittal on a charge, retrying the person for the same crime.

(2) After conviction on a charge, trying the person again for the same actions (such as under a law allowing more severe punishment). For example, if a driver is convicted of reckless driving for running over a pedestrian, it would be double jeopardy to try the driver for reckless homicide.

(3) Punishing a person more than once for the same offense, such as by trials for two "crimes" that actually contain the same elements and consisted of the same wrongful acts.[103]

The Illinois Supreme Court in 1996 held that prosecuting a person for violation of the Controlled Substances Act, after his automobile had been forfeited for its use in committing that same violation, imposed double jeopardy on that defendant.[104] The Illinois Supreme Court also held that the Cannabis and Controlled Substances Tax Act, imposing a tax and penalty on persons dealing in marijuana or controlled substances, imposed double jeopardy by punishing a person who had already been criminally convicted of a drug crime.[105] These decisions were based on a 1994 U.S. Supreme Court decision striking down a Montana drug tax for punishing drug violators twice.[106] These cases do *not* prohibit the state from collecting heavy fines in drug prosecutions. What they prevent is making drug violators pay taxes or penalties, or suffer forfeiture of their property, through proceedings separate from those imposing criminal penalties but arising out of the same conduct.

A 1995 Illinois Appellate Court case similarly held that if drug forfeiture proceedings on a defendant's property have been completed, the defendant has been punished; thus a criminal prosecution for the charge that resulted in forfeiture is barred as double jeopardy.[107]

The prohibition on double jeopardy can also apply to situations in which a trial has begun, but a mistrial is declared and another trial is held on the same charge. This is governed by complex rules that are beyond the scope of this publication.

SECTION 11. LIMITATION OF PENALTIES AFTER CONVICTION

> **All penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship. No conviction shall work corruption of blood or forfeiture of estate. No person shall be transported out of the State for an offense committed within the State.**

Courts sometimes hold that laws imposing punishments that seem disproportionate to the crimes involved violate the requirement that penalties accord with the seriousness of the crime. For example, the Illinois Supreme Court struck down a law making alteration of a

vehicle drive-away sticker a Class 2 felony, while unauthorized possession of a certificate of title was two steps less serious (a Class 4 felony), and display of an *unauthorized* drive-away sticker was only a Class A misdemeanor.[108]

This section does not prohibit use of victim-impact statements in sentencing.[109] The requirement that penalties be determined with the objective of restoring the offender to useful citizenship does not prohibit the death penalty or life imprisonment.[110] Nor does it prohibit mandatory prison sentences for serious crimes,[111] or invalidate Illinois' habitual-criminal law that severely punishes a person who, three times in succession, commits and is convicted of serious felonies.[112] But Illinois Appellate Court cases have occasionally cited this section as support for reducing at least the minimum term of a prison sentence imposed at trial, if the offender was young and under the original sentence would have spent most of his life in prison. The court opinions pointed out that if the offender appears to become rehabilitated he may be released after the minimum term, but if not he may be kept for up to the maximum term sentenced.[113]

"Corruption of blood" was an old English punishment preventing a person from receiving or transferring property by inheritance. It is forbidden in federal prosecutions for treason by a provision in the U.S. Constitution,[114] which has not been held to apply to the states. This section's prohibition on corruption of blood does not invalidate laws that deny state contracts to firms involved in bribery[115] or that cut off state pensions to persons convicted of felonies arising out of state service and their heirs.[116]

Despite the last sentence of this section, the Illinois Supreme Court has held that the state can constitutionally send prisoners to serve their sentences in other states under the Interstate Corrections Compact. The court held that the last sentence is violated only if transportation out of state amounts to cruel and unusual punishment.[117]

SECTION 12. RIGHT TO REMEDY AND JUSTICE

Every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain justice by law, freely, completely, and promptly.

The 1870 Constitution contained essentially the same provision except for the mention of wrongs to privacy. This section is largely hortatory rather than enforceable,[118] and does not invalidate laws that give partial immunity against suits for breach of promise to marry or alienation of affections.[119] But courts have cited this section as partial support for (1) invalidating a law that completely abolished a common-law right to sue in some kinds of situations,[120] and (2) creating a new remedy where one was needed.[121]

The Illinois Supreme Court held unconstitutional a $5 tax on persons filing for divorce, with the proceeds going to fund domestic-violence shelters. The court said that not all litigation fees or taxes are invalid, but that such charges may be imposed "only for purposes relating to the operation and maintenance of the courts."[122]

The Illinois Appellate Court upheld a $1 fee on the party bringing a civil suit, with proceeds going to a nonprofit dispute resolution fund, after determining that the fee was sufficiently related to the operation and maintenance of the courts.[123]

SECTION 13. TRIAL BY JURY

The right of trial by jury as heretofore enjoyed shall remain inviolate.

The U.S. Constitution's Seventh Amendment guarantee of a right to jury trial in civil cases does not apply to state courts.[124] But this section and its predecessors in earlier Illinois Constitutions protect the right in both civil and criminal cases. The right of trial by jury "as

heretofore enjoyed" has been held to refer to the right both under English common law and as it existed at the time of adoption of each Illinois Constitution.[125] As discussed below, the right does not automatically apply to kinds of suits that are newly created by statute.

The Illinois Supreme Court struck down a statutory provision that, for some very serious crimes, required a jury trial unless both the defendant *and* the prosecutor waived it—thus allowing the prosecutor to require a jury trial over a defendant's objection. The court held, based on older Illinois cases, that this section's guarantee of the right of jury trial "as heretofore enjoyed" gives a defendant a right *not* to have a jury trial.[126]

When the right to a jury trial does apply, a criminal defendant may not be punished more severely for exercising it.[127] But a reasonable fee can be required of persons who demand jury trials in civil cases.[128]

Application to drug forfeiture laws

The Illinois Supreme Court has held that in prosecutions under the Drug Asset Forfeiture Procedure Act, this section guarantees the owner of property sought to be forfeited a right to a jury trial. The reason is that such attempted forfeitures are a kind of *in rem* civil asset forfeiture, which existed under common law and historically included a right to a jury trial.[129]

An Illinois Appellate Court decision said that another forfeiture law, which provides for a judge alone to determine whether property of a person charged with a drug crime is subject to forfeiture due to its maintenance with drug-derived funds, did not violate the defendant's right to a jury trial. In that case the forfeiture occurred *after* the defendant was convicted of drug racketeering, and the Appellate Court panel said this was only a sentencing decision. The historical right to a jury trial applies to the conviction phase of a trial, not to sentencing.[130]

Statutes on jury trials

The General Assembly can expand the right to a jury trial to cover more kinds of cases than are constitutionally guaranteed.[131] At present an Illinois law guarantees the right to a jury trial to every person accused of a criminal offense unless the defendant understandingly waives that right in open court.[132]

The right to a jury trial does not automatically extend to new kinds of civil proceedings that were not known to the common law, such as those under the Workers' Compensation Act,[133] Environmental Protection Act,[134] or Consumer Fraud and Deceptive Business Practices Act.[135]

SECTION 14. IMPRISONMENT FOR DEBT

> **No person shall be imprisoned for debt unless he refuses to deliver up his estate for the benefit of his creditors as provided by law or unless there is a strong presumption of fraud. No person shall be imprisoned for failure to pay a fine in a criminal case unless he has been afforded adequate time to make payment, in installments if necessary, and has willfully failed to make payment.**

The first sentence is taken from the 1870 Illinois Constitution; the second sentence on paying fines was new in the 1970 Constitution. A person may not be imprisoned for failure to pay a debt that was not fraudulently contracted,[136] even (according to a majority of a panel of Illinois Appellate Court judges) if the person is unable to pay because he refuses to work.[137] But a divorced parent can be imprisoned for contempt for failure to pay court-ordered child support,[138] as can a person who has committed a legal wrong involving malice and failed to pay a resulting judgment.[139] A provision in the Unified Code of Corrections provides for paying fines in installments if necessary.[140]

SECTION 15. RIGHT OF EMINENT DOMAIN

Private property shall not be taken or damaged for public use without just compensation as provided by law. Such compensation shall be determined by a jury as provided by law.

Eminent domain is the inherent power of a sovereign government to take property it needs for a public use. The U.S. Constitution's Fifth Amendment, which applies to the states through the Fourteenth Amendment,[141] similarly requires that just compensation be paid if government takes property. But this section goes further and requires compensation if a government project merely damages property. "Property" within the meaning of this section includes every interest that a person may have in anything that can be subject to ownership, including real property and personal property.[142]

A municipality, having been given zoning power by the state, may restrict the use of property through zoning without paying compensation.[143] But such restrictions on use of the property will not be upheld if a court finds them unsupported by a public purpose or otherwise unreasonable.[144]

A rapidly growing issue in constitutional law is the extent to which government can require developers to pay fees, or meet other requirements, as a condition of being allowed to develop land, when the fees are imposed for broad purposes such as avoiding congestion and protecting the environment. The Illinois Supreme Court, citing both a 1994 U.S. Supreme Court case[145] and a 1961 Illinois case,[146] has held that such "impact fees" or "development exactions" are constitutionally permissible only if the need for them is "specifically and uniquely attributable" to the development on which they are being imposed.[147]

SECTION 16. EX POST FACTO LAWS AND IMPAIRING CONTRACTS

No ex post facto law, or law impairing the obligation of contracts or making an irrevocable grant of special privileges or immunities, shall be passed.

This section prohibits some kinds of laws that 'change the rules in the middle of the game' or give a permanent benefit to someone that is not available to others.

Ex post facto laws

Laws punishing persons for past actions that were legal when done, increasing the punishment for past actions, or making conviction for past actions easier are described as *ex post facto* ("from after the fact"). The prohibition on *ex post facto* laws applies only to laws that are criminal or otherwise penal.[148] Furthermore, it does not prohibit the lengthening of a statute-of-limitations period against persons on whose criminal acts the statute of limitations has not yet expired,[149] or the substitution of informations for indictments to prosecute crimes committed before the change in law that allowed use of informations.[150]

On the other hand, the Illinois Supreme Court has held that retroactive application of an act amending the former homicide law violated the prohibition against *ex post facto* laws since it altered the legal rules of evidence to make conviction easier;[151] and that a change in law from annual parole hearings to hearings only every 3 years could not be applied to a convict whose offense was committed while the law provided for annual hearings.[152]

The Illinois Supreme Court in 1994 re-affirmed an 1895 holding that the General Assembly cannot retroactively lengthen a civil limitations period after it has expired on a potential suit. The decision was not based on this section (which, as noted above, applies only to penal laws). Instead, the court's reasoning was that reviving a right to sue after its expiration would violate due process (Article 1, section 2) by taking from the potential defendant a vested right that was created when the limitations period expired.[153] The U.S. Supreme Court has long held the opposite under the U.S. Constitution,[154] and two members of the Illinois court dissented from this ruling.[155]

Impairing obligation of contracts

Historically, most laws impairing obligations of contracts were attempts to relieve debtors from their obligations during hard economic times. But this provision has been used (mostly unsuccessfully) to challenge other kinds of laws that changed legal relationships after they were formed. The Illinois Supreme Court held that this section did not invalidate the part of the Illinois divorce law enacted in 1977 that made most property acquired by the work of either spouse during a marriage "marital property" available for a judge to divide between the spouses if there is a divorce.[156] Nor does it prevent reasonable regulation to protect public health and safety, such as zoning, even though that may interfere indirectly with contract rights.[157] It also does not prevent a law from restricting contracts that are entered into *after* it is enacted.[158]

The Illinois Supreme Court upheld, against attack under this section, a 1980 law rearranging the revenues and finances of the Chicago school system to avert a financial crisis, even though it might affect the rights of creditors, since it was an apparently necessary exercise of the state's power to provide for the general welfare.[159]

The Illinois Supreme Court also held that the 1988 Chicago school reform law did not violate this section by ending the statutorily granted tenure of school principals. The court noted that statutes are not ordinarily read as creating contract rights, since the legislature can change statutes at any time. To establish a contract right from a statute, there must be clear evidence of a legislative intent to create a contract.[160]

But the prohibition on laws impairing the obligation of contracts does bar the General Assembly from directly changing obligations under a contract that was entered into before the law was enacted. For example, the General Assembly cannot provide that already-issued municipal bonds, secured by special assessments that are more than 30 years delinquent, are to be canceled,[161] or by a new law change the coverage of insurance contracts that were entered into before that law took effect.[162]

The U.S. Constitution also prohibits states from enacting *ex post facto* laws and laws impairing the obligation of contracts.[163] This restricts the state in changing the charters of a few corporations that were given special privileges in their charters enacted before the 1870 Constitution (which forbade the grant of irrevocable special privileges). Probably the most significant example is Northwestern University, whose pre-1870 charter says all of its property is exempt from taxation.[164] But the value of that exemption as to property the university leases out for commercial use has been effectively eliminated by a tax on the leasehold interest in such property,[165] which has been upheld.[166]

Retroactive change in civil law

As already mentioned, the prohibition on *ex post facto* laws applies only to criminal laws. But a somewhat related principle not stated in this section applies to civil laws. The Illinois Supreme Court has held that the General Assembly cannot undo judicial interpretations of laws as to events that took place before the legislative change took effect (thus in effect retroactively amending the earlier law),[167] and in particular cannot reverse final decisions by the courts as to the parties involved in those decisions.[168] These holdings are usually based on the principle of separation of powers (Article 2, section 1). The reasoning seems to be that if a legislative body could tailor laws to determine the outcomes of specific cases, the power of courts to decide cases would be to some extent taken over by the legislature. Although not usually stated, this argument borders on the principle of equal protection (Article 1, section 2), since statutes 'tailor-made' to affect particular cases would tend to be unfair either to the persons they affected, or to similarly situated persons they did *not* affect.

However, the General Assembly *can* amend a law as to future cases.[169] The courts also usually uphold "curative" laws that retroactively validate actions by government units that were not fully authorized when they were taken, if a law *could* have authorized them before they were taken and no vested rights or interests are violated.[170]

SECTION 17. NO DISCRIMINATION IN EMPLOYMENT AND THE SALE OR RENTAL OF PROPERTY

All persons shall have the right to be free from discrimination on the basis of race, color, creed, national ancestry and sex in the hiring and promotion practices of any employer or in the sale or rental of property.

These rights are enforceable without action by the General Assembly, but the General Assembly by law may establish reasonable exemptions relating to these rights and provide additional remedies for their violation.

This provision was new in the 1970 Constitution. The committee proposing it at the constitutional convention intended to go beyond nondiscrimination requirements applying only to government action, and reach private actions as well. But the committee did not intend to forbid discrimination by voluntary associations.[171] An Illinois Appellate Court decision held that this section does not prohibit private clubs in Chicago from denying admission and service to women, concluding that such clubs are voluntary associations. One judge dissented, arguing that such clubs play an "important role . . . in the business and professional activities of the Chicago metropolitan area . . . ."[172]

Interaction With Human Rights Act

The Illinois Human Rights Act, which combined several antidiscrimination laws in 1980, implements the guarantees of this section.[173] Before the Act took effect, Illinois courts had allowed some suits under this section against employers for discrimination based on sex.[174] But the Act says "Except as otherwise provided by law, no court of this state shall have jurisdiction over the subject of an alleged civil rights violation other than as set forth in this Act."[175] The Illinois Supreme Court has therefore held that the Act is now the exclusive remedy under Illinois law for civil rights violations in employment.[176] The court said that the General Assembly in the Act had established "reasonable exemptions relating to those rights" as allowed by this section—including an exemption of employers with fewer than 15 employees.[177]

Decisions by the Illinois Appellate Court in two districts have held that this section applies only to "hiring and promotion" practices narrowly construed, not to all employment practices such as those on employee relocation and dismissal.[178] Illinois Appellate Court decisions in two other districts have held or implied that this section's application is broader.[179] The Illinois Supreme Court in a 1994 case mentioned this issue but found no need to decide it then.[180]

SECTION 18. NO DISCRIMINATION ON THE BASIS OF SEX

The equal protection of the laws shall not be denied or abridged on account of sex by the State or its units of local government and school districts.

This provision was new in the 1970 Constitution. It shares with section 17 a prohibition on discrimination by sex. But while section 17 applies to businesses and prohibits only discrimination in business transactions, this section applies to governments and prohibits virtually every kind of sex discrimination by them. The Illinois Supreme Court has held that this section makes sex a "suspect classification" in Illinois, meaning that any law, regulation, or ordinance discriminating by sex must have a "compelling governmental purpose" capable of withstanding "strict judicial scrutiny" to be upheld.[181] Illinois courts accordingly held unconstitutional former sections of the Juvenile Court Act that discriminated between male and female 17-year-olds for purposes of the Act;[182] a law setting different minimum ages for marriage depending on gender;[183] and an ordinance prohibiting persons from providing commercial massages of persons of the other sex.[184]

On the other hand, the Illinois Supreme Court upheld a law setting a higher penalty for aggravated incest (that between a father and daughter) than for other incest. The court pointed out that incest by a father has greater potential for harm than incest by a mother, and occurs far more frequently, thus justifying harsher treatment.[185] However, the General Assembly later amended the law to make it sex-neutral.[186] An Illinois Appellate Court decision upheld a law prohibiting bar owners from employing women to ask patrons to buy them drinks, stating that such solicitations by women are a far greater problem than solicitations by men.[187]

Although the Illinois Supreme Court has not ruled on this issue, a large majority of Illinois Appellate Court decisions on the subject have held that there is no longer a presumption in divorce cases that a mother is more fit for child custody than a father.[188]

Interaction With Human Rights Act

At least one Illinois Appellate Court case has held that the Illinois Human Rights Act is now the only remedy for violations of this section—at least if the alleged discrimination is in employment.[189]

SECTION 19. NO DISCRIMINATION AGAINST THE HANDICAPPED

> **All persons with a physical or mental handicap shall be free from discrimination in the sale or rental of property and shall be free from discrimination unrelated to ability in the hiring and promotion practices of any employer.**

New in the 1970 Constitution, this section attempts to protect persons with "physical or mental handicap" from unwarranted discrimination. The courts have had difficulty deciding what is a "handicap" for purposes of this section. They have held that cancer[190] and kidney disease followed by a kidney transplant[191] do not qualify as handicaps within the meaning of this section or of the former Equal Opportunities for the Handicapped Act.[192] On the other hand, an Illinois Appellate Court panel held that having a partially amputated leg is a handicap; the court sent back for trial a claim by a would-be fireman that he should have been hired despite that condition, because he had shown his ability as an auxiliary fireman to carry out all the duties of the job.[193] In future decisions, conditions caused by disease may be treated as handicaps for purposes of Illinois law, because the Illinois Human Rights Act defines "handicap" to include conditions caused by disease.[194] The federal Americans with Disabilities Act of 1990[195] is also relevant in many situations.

SECTION 20. INDIVIDUAL DIGNITY

> **To promote individual dignity, communications that portray criminality, depravity or lack of virtue in, or that incite violence, hatred, abuse or hostility toward, a person or group of persons by reason of or by reference to religious, racial, ethnic, national or regional affiliation are condemned.**

This section is based on a former Illinois criminal law.[196] It is a sort of constitutional homily and, as the committee that proposed it at the 1970 constitutional convention[197] and an Illinois Appellate Court decision[198] have stated, it is strictly hortatory. It states an ideal but does not create a right to sue.

SECTION 21. QUARTERING OF SOLDIERS

> **No soldier in time of peace shall be quartered in a house without the consent of the owner; nor in time of war except as provided by law.**

The prohibition on quartering of soldiers in private houses, a practice of the British

before the Revolutionary War, is carried over from the 1870 Constitution and is based on the Third Amendment to the U.S. Constitution.

SECTION 22. RIGHT TO ARMS

Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed.

The Second Amendment to the U.S. Constitution, also dealing with the right to keep and bear arms, has been held not to restrict state governments in relation to their residents.[199] Because of that, and to insure a personal right to keep arms in addition to the collective right to an armed militia guaranteed by the Second Amendment, the 1970 constitutional convention proposed this section. The committee explanation stated that "a citizen has the right to possess and make reasonable use of arms that law-abiding persons commonly employ for purposes of recreation or the protection of person and property. Laws that attempted to ban all possession or use of such arms . . . would be invalid."[200] However, the delegate who explained the committee proposal to the full convention stated four times on the floor that it would not prevent a complete ban on handguns.[201] A nearly total ban on handguns in Morton Grove was upheld under this section by the U.S. Court of Appeals in Chicago.[202] The Illinois Supreme Court, by 4-3 vote, also held that the Morton Grove ordinance did not violate this section. Vigorous dissents by the minority judges illustrate the closeness of the question.[203]

The U.S. Court of Appeals also held that Chicago's ban on buying handguns beginning in 1982 did not violate the U.S. Constitution, affirming a federal district court decision that had also upheld the ordinance against attack under this section.[204]

Illinois Appellate Court decisions have held that this section does not invalidate laws denying a Firearm Owner's Identification Card (required to buy a firearm legally) to anyone who has been a patient in a mental institution at any time in the past 5 years,[205] and prohibiting carrying a loaded firearm in a municipality except on one's own premises.[206]

SECTION 23. FUNDAMENTAL PRINCIPLES

A frequent recurrence to the fundamental principles of civil government is necessary to preserve the blessings of liberty. These blessings cannot endure unless the people recognize their corresponding individual obligations and responsibilities.

This section is a constitutional homily.

SECTION 24. RIGHTS RETAINED

The enumeration in this Constitution of certain rights shall not be construed to deny or disparage others retained by the individual citizens of the State.

This section, based on the Ninth Amendment to the U.S. Constitution, is designed to prevent any inference that an existing right should not be protected simply because it is not specifically mentioned in the Bill of Rights. The judicially created federal right of privacy was said to be based partly on the Ninth Amendment, but no rights have been specifically declared by any Illinois court based on this section.

Article 2. The Powers of the State

Article 2 declares some principles regarding the powers of the state government and of its parts in relation to one another. These fundamental principles had long been established in American and Illinois constitutional law, but are stated in the Illinois Constitution for the sake of completeness.

SECTION 1. SEPARATION OF POWERS

The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another.

The basic principle of separation of powers has existed in the governments of the United States and all the states from the earliest times. Illinois courts have often said that it does not prohibit all exercises by one branch of the kinds of powers usually found in other branches.[1] The General Assembly exercises judicial-type powers if it holds a witness in contempt or impeaches and convicts a state officer; the courts exercise legislative-type powers if they redraw legislative districts after other bodies have failed to do so; and administrative agencies in the executive branch often exercise two or even all three kinds of powers, subject to judicial review for legality and procedural fairness. But separation of powers prohibits any of the three branches from coercing or controlling the actions of another.[2]

Delegation of legislative powers to other branches

The Illinois Supreme Court has held invalid a law attempting to authorize the state Department of Public Aid, with the Governor's consent, to reallocate appropriated funds among aid programs of the Department, since that was an attempt to delegate legislative powers to the executive branch.[3] The Illinois Supreme Court in 1994 also held that this section was violated by legislative delegation to courts of responsibility to decide whether an automobile maker could allow a new dealership in the "market area" of an existing dealership; the law essentially required courts to make policy decisions on whether to allow local competition in automobile retailing.[4]

On the other hand, the Supreme Court in 1983 upheld a series of actions in which the General Assembly authorized the Governor to reserve some state funds from spending to establish a financial reserve, and the Department of Public Aid reduced spending by temporarily halting reimbursement under the medicaid program for the "medically indigent" (persons not eligible for medicaid due to membership in a category such as dependent children, but unable to afford the entire cost of their medical care).[5] The Aid to the Medically Indigent program was later abolished by statute.[6]

Encroachment by legislature on other branches

The Illinois Supreme Court has held invalid a number of laws that it said encroached on the powers of the judiciary. Examples are given in the discussion of Article 6, section 1. The Supreme Court also held that this section is violated if a law enacted by the General Assembly attempts to overrule the courts' interpretation of an earlier law as to cases that arose *before* enactment of the amendatory law[7]—particularly cases that have been finally decided by the courts before the new law takes effect.[8] And the Attorney General advised that a proposal for a legislative commission to exercise control over the spending of funds after they were appropriated would be an unconstitutional encroachment by the legislative branch on executive powers.[9]

Delegation of governmental powers to private group

Although not stated in this section, it is a well-established constitutional principle that governmental powers may not be delegated to a private group.[10]

SECTION 2. POWERS OF GOVERNMENT

The enumeration in this Constitution of specified powers and functions shall not be construed as a limitation of powers of state government.

This provision, new in the 1970 Constitution, declares that the Constitution does not grant powers where none existed before, but merely sets limits on powers that are inherent in a state government. This principle had already been recognized by the Illinois Supreme Court.[11] Unlike the national government, which has only the powers that are set forth in the U.S. Constitution or are needed to execute those powers, the state government has all powers not denied it by the United States or Illinois Constitution.

Article 3. Suffrage and Elections

In addition to setting voting qualifications, this article established a State Board of Elections to act as the central coordinating authority for all the state's election districts. The last section provides for all general elections except local ones to take place at the same time as elections for the General Assembly, to increase voter turnout.

SECTION 1. VOTING QUALIFICATIONS

> **Every United States citizen who has attained the age of 18 or any other voting age required by the United States for voting in State elections and who has been a permanent resident of this State for at least 30 days next preceding any election shall have the right to vote at such election. The General Assembly by law may establish registration requirements and require permanent residence in an election district not to exceed thirty days prior to an election. The General Assembly by law may establish shorter residence requirements for voting for President and Vice-President of the United States.**

This section establishes three basic requirements for voting eligibility: U.S. citizenship, age, and duration of residence in the state. The General Assembly may also set registration requirements. The 1970 constitutional convention submitted to the voters as a separate question the issue of lowering the minimum voting age to 18 years. That proposition was defeated, and this section as approved by the voters set the voting age at 21 "or any other voting age required by the United States for voting in State elections." But after the 1970 Constitution was adopted, an amendment to the U.S. Constitution was ratified by the states, including Illinois, setting a nationwide minimum voting age of 18.[1] In 1988, Illinois voters approved an amendment to this section reducing its stated minimum voting age to 18.[2]

This section as ratified in 1970 set a minimum state residency requirement of 6 months for voting. However, the U.S. Supreme Court held that state residency requirements of more than about 50 days for voting impose too heavy a burden on the constitutional rights to vote and to travel between states, and thus are invalid.[3] The 1988 amendment to this section also shortened the minimum state residency requirement to 30 days. The section of the Election Code setting requirements for voting also allows a person to vote after 30 days' residence in the state and election district.[4]

The Illinois Supreme Court in 1996 held that a law abolishing the terms of persons already elected as University of Illinois trustees and allowing them to be replaced by gubernatorial appointees violated the right to vote by nullifying all votes that had been cast for the existing trustees. But the court said that the method of selection of future trustees could be statutorily changed from election to appointment,[5] as has been done.[6]

Although not mentioned in this section or its predecessors, lack of a sound mind has been held to disqualify a person from voting,[7] and the committee that proposed this section at the 1970 convention intended no change in that rule.[8]

SECTION 2. VOTING DISQUALIFICATION

> **A person convicted of a felony, or otherwise under sentence in a correctional institution or jail, shall lose the right to vote, which right shall be restored not later than upon completion of his sentence.**

A law enacted under the 1870 Constitution formerly provided that a person sentenced to prison could not resume voting without first obtaining a certificate of restoration of the rights of citizenship, issued by the Governor or a court.[9] Amendments since then have

changed the provision to say that no person who has been convicted in any federal or state court of any crime, and sentenced to confinement in any penal institution, may vote "until his release from confinement," apparently implying that restoration of the right to vote occurs automatically at that time.[10] The term "penal institution" in that statute apparently includes a jail,[11] consistent with the wording of this section. The statute treats a person who is on furlough or work release from prison as confined, but not one who has been released on parole.[12]

SECTION 3. ELECTIONS

All elections shall be free and equal.

This provision has existed in slightly different forms in all Illinois Constitutions. It means that any qualified voter may freely vote and one person's vote is to have the same influence as any other's—a principle that has been enforced by federal reapportionment decisions since 1962.[13] This section prohibits holding a town meeting from which one's political opponents are excluded[14] and submitting to the voters a referendum question that combines issues so diverse that voters might want to approve one part but reject another.[15] The latter situation would coerce voters' choice by forcing them to accept or reject the entire package of propositions.

However, this section does not require that all voters be given identical opportunities or choices. The Illinois Supreme Court has upheld laws that provided different amounts of time to register voters during the spring primary season in two classes of counties, depending on population and form of government,[16] and that limited the class of persons who could be elected as county board chairman to board members who were partway through their terms, thus giving no chance of electing a chairman in a given year to districts where seats were up for election that year.[17]

The Illinois Supreme Court held the 1988 Chicago school reform law partly unconstitutional because its method for electing local school councils violated the requirement of one person, one vote. The court stated that the one person, one vote requirement under this section is no more extensive than under the Fourteenth Amendment to the United States Constitution. Under the 1988 law, members of each local school council, which the law created and to which it gave several policymaking powers, were to be elected as follows: 6 parents of children attending the school, elected by such parents; 2 voters in the area covered by the school, also elected by the parents; 2 teachers in the school, elected by the school staff; and the school principal. This violated the federal and state constitutional requirements that members of elected bodies with substantial governmental powers be chosen in a way that gives equal weight to each registered voter's vote.[18]

SECTION 4. ELECTION LAWS

The General Assembly by law shall define permanent residence for voting purposes, insure secrecy of voting and the integrity of the election process, and facilitate registration and voting by all qualified persons. Laws governing voter registration and conduct of elections shall be general and uniform.

This is a combination of provisions from several sections of the 1870 Constitution. A general and uniform law is one that applies equally to all persons or other objects of the law that are similarly situated.[19] As noted under the previous section, the requirement that voter registration laws be general and uniform did not invalidate a law establishing different lengths of time for voter registration during the spring primary season in two classes of counties based on population and form of government.[20] Nor did it invalidate a law allowing Presidential nominating delegates to run without identification of which candidate they preferred, even though one party identified the preference of its candidates and the other did not.[21]

A section in the Election Code states that a "permanent abode" is necessary for residence for voting purposes,[22] although application of that general principle to specific cases is of necessity left to the courts.

SECTION 5. BOARD OF ELECTIONS

A State Board of Elections shall have general supervision over the administration of the registration and election laws throughout the State. The General Assembly by law shall determine the size, manner of selection and compensation of the Board. No political party shall have a majority of members of the Board.

Creation of a State Board of Elections was proposed on the floor of the 1970 convention to deal with the growing need for a central authority to interpret election laws and coordinate procedures for holding elections.[23] This section authorizes the General Assembly to decide the number and method of selection of the members of the Board. Since political bias by the Board could endanger the fairness of elections throughout the state, it also prohibits any political party from having a majority on the Board.

In 1973 the General Assembly provided for a four-member Board, with two nominations by each of the highest-ranking leaders of each house of the General Assembly, of both the majority and minority party, and the Governor choosing one of the persons nominated by each legislative leader. Any deadlocks on the Board were to be resolved by the following "tie-breaker" method: one of the members would be chosen by lot to be disqualified from voting on the issue, and the remaining three members would then decide it.[24]

In 1976 the Illinois Supreme Court held these provisions unconstitutional for two reasons: (1) the method of selection violated Article 5, subsection 9(a) which provides in part that "[t]he General Assembly shall have no power to elect or appoint officers of the Executive Branch" (the court having decided that the Board was primarily an executive agency), and (2) the tie-breaker provision violated the requirement of this section that no political party have a majority on the Board, since after use of the tie-breaker one political party ordinarily would have two-thirds of the members of the Board eligible to vote on the issue.2[5]

The General Assembly then amended those sections to provide for an eight-member Board, all appointed by the Governor but four of whom would have to be picked by the Governor from a list of names selected by an executive-branch official of a different party than the Governor.[26] The amended sections contain no tie-breaker provision. No reported case has challenged the constitutionality of this arrangement.

The Illinois Supreme Court in another 1976 case held that members of the Board, like other officers appointed by the Governor, can be removed from office by the Governor only for cause (see Article 5, section 10). That case also held that due to the independent nature of the Board, whether cause exists is judicially reviewable.[27]

SECTION 6. GENERAL ELECTION

As used in all articles of this Constitution except Article VII, "general election" means the biennial election at which members of the General Assembly are elected. Such election shall be held on the Tuesday following the first Monday of November in even-numbered years or on such other day as provided by law.

Defining the time for the general election reflects the desire to elect as many state officers as possible at the same time to increase voter turnout. This practice began in the judicial article of the 1870 Constitution, which provided for judges to be elected at the same time as legislators.[28] Local elections, provided for in Article 7, are exempted so as to allow them to be held at a different time.[29]

Article 4. The Legislature

Unlike Congress, which has only the powers explicitly given it by the U.S. Constitution and the additional powers needed to carry out those stated powers, a state legislature has all legislative powers that are not denied by the state or federal Constitution. This includes direct authority over all subordinate units of government such as counties, townships, municipalities, and special districts, subject in Illinois to two limitations:

(1) Home rule under Article 7, section 6, and the lesser powers guaranteed to non-home-rule units by Article 7, sections 7 and 8.

(2) The prohibition in Article 4, section 13 on special laws "when a general law is or can be made applicable."

Thus the General Assembly may exercise almost complete control over units of local government—provided it does not violate the home-rule and other powers of units having them, and exercises control by general laws applicable to any unit that is within a reasonable population or other classification. Cases on these two limitations are described under the parts of the Constitution just cited.

Legislative delegation of authority

Legislative actions are sometimes challenged on the opposite ground—not for taking too many powers from other bodies, but for giving too many powers to them. It is well established that although the General Assembly may not give away any of its legislative powers, it may set up a general statutory scheme designed to reach a result and leave details for reaching it to a governmental agency, subject to later oversight by the General Assembly and review by the courts to determine whether the agency has overstepped its authority.[1] But an agency may not be left free to carry out the legislative purpose as it sees fit without any standards,[2] or allowed to determine to whom a law will apply.[3] How much discretion may be given to government agencies that are under legislative control is often a matter of judgment for the courts.

However, delegation of legislative power to private, nongovernmental bodies is unconstitutional.[4]

SECTION 1. LEGISLATURE—POWER AND STRUCTURE

The legislative power is vested in a General Assembly consisting of a Senate and a House of Representatives elected by the electors from 59 Legislative Districts and 118 Representative Districts.

The 1870 Constitution, as amended by the voters in 1954, provided for 58 senatorial districts and 59 representative districts. Three representatives were elected from each representative district at large, using cumulative voting. Under that system, each voter had three votes for House candidates and could distribute them in any of three ways: 1 vote to each of three candidates; 1½ votes to each of two candidates; or all 3 votes to one candidate.[5] The 1970 Constitution changed this only slightly, by increasing the number of senatorial districts to 59 and making senatorial districts and representative districts the same (called "Legislative" districts). Three representatives were still elected from each such district by cumulative voting.

In 1980 the voters approved the so-called "Legislative Cutback" amendment that had been proposed by initiative (see Article 14, section 3). It required each legislative (senatorial) district to be divided into two representative districts, each to elect one representative. This abolished cumulative voting and reduced the size of the House of Representatives from 177 to 118, effective with the November 1982 election.

SECTION 2. LEGISLATIVE COMPOSITION

(a) One Senator shall be elected from each Legislative District. Immediately following each decennial redistricting, the General Assembly by law shall divide the Legislative Districts as equally as possible into three groups. Senators from one group shall be elected for terms of four years, four years and two years; Senators from the second group, for terms of four years, two years and four years; and Senators from the third group, for terms of two years, four years and four years. The Legislative Districts in each group shall be distributed substantially equally over the State.

Since all Senate seats have to be redistricted every 10 years, this subsection provides for all the seats to be up for election in the year following the redistricting; then the seats go through 2- and 4-year terms in stages so there will be some Senate seats up for election every 2 years. A statute divides Senate seats into three groups, with the Secretary of State to draw cards at random after each redistricting to determine which group of districts will have terms of four, four, and two years; four, two, and four years; and two, four, and four years.[6]

(b) Each Legislative District shall be divided into two Representative Districts. In 1982 and every two years thereafter one Representative shall be elected from each Representative District for a term of two years.

This provision is from the "Legislative Cutback" amendment of 1980.

(c) To be eligible to serve as a member of the General Assembly, a person must be a United States citizen, at least 21 years old, and for the two years preceding his election or appointment a resident of the district which he is to represent. In the general election following a redistricting, a candidate for the General Assembly may be elected from any district which contains a part of the district in which he resided at the time of the redistricting and reelected if a resident of the new district he represents for 18 months prior to reelection.

The statement in the Constitution of requirements for membership in the General Assembly prevents any statute from adding further requirements.[7]

(d) Within thirty days after a vacancy occurs, it shall be filled by appointment as provided by law. If the vacancy is in a Senatorial office with more than twenty-eight months remaining in the term, the appointed Senator shall serve until the next general election, at which time a Senator shall be elected to serve for the remainder of the term. If the vacancy is in a Representative office or in any other Senatorial office, the appointment shall be for the remainder of the term. An appointee to fill a vacancy shall be a member of the same political party as the person he succeeds.

Illinois law provides for a vacancy in the Senate to be filled by the "legislative committee," and a vacancy in the House by the "representative committee," of the vacating legislator's district and party. These committees are composed of leaders of that political party in the district.[8] The Illinois Supreme Court upheld this provision in 1988.[9]

(e) No member of the General Assembly shall receive compensation as a public officer or employee from any other governmental entity for time during which he is in attendance as a member of the General Assembly.

No member of the General Assembly during the term for which he was elected or appointed shall be appointed to a public office which shall have been created or the compensation for which shall have been increased by the General Assembly during that term.

The often-controversial issue of outside public employment by legislators was debated at the 1970 convention and eventually resolved with this compromise provision. It allows outside public employment, but prohibits payment for such employment for days on which the legislator attends the General Assembly. In addition, Illinois Attorneys General have issued a large number of opinions on whether specific pairs of offices are compatible. These opinions are based on possible conflicts of interest and inconsistent duties involved in the two offices.

Legislators are also prohibited from resigning to take an office that has been created or made more lucrative during their present term. Earlier Illinois Constitutions contained similar provisions, which are designed to remove any incentive for creation or increase in the salary of an office that might exist if a legislator hoped to be appointed to it.

SECTION 3. LEGISLATIVE REDISTRICTING

(a) Legislative Districts shall be compact, contiguous and substantially equal in population. Representative Districts shall be compact, contiguous, and substantially equal in population.

(b) In the year following each Federal decennial census year, the General Assembly by law shall redistrict the Legislative Districts and the Representative Districts.

If no redistricting plan becomes effective by June 30 of that year, a Legislative Redistricting Commission shall be constituted not later than July 10. The Commission shall consist of eight members, no more than four of whom shall be members of the same political party.

The Speaker and Minority Leader of the House of Representatives shall each appoint to the Commission one Representative and one person who is not a member of the General Assembly. The President and Minority Leader of the Senate shall each appoint to the Commission one Senator and one person who is not a member of the General Assembly.

The members shall be certified to the Secretary of State by the appointing authorities. A vacancy on the Commission shall be filled within five days by the authority that made the original appointment. A Chairman and Vice Chairman shall be chosen by a majority of all members of the Commission.

Not later than August 10, the Commission shall file with the Secretary of State a redistricting plan approved by at least five members.

If the Commission fails to file an approved redistricting plan, the Supreme Court shall submit the names of two persons, not of the same political party, to the Secretary of State not later than September 1.

Not later than September 5, the Secretary of State publicly shall draw by random selection the name of one of the two persons to serve as the ninth member of the Commission.

Not later than October 5, the Commission shall file with the Secretary of State a redistricting plan approved by at least five members.

An approved redistricting plan filed with the Secretary of State shall be presumed valid, shall have the force and effect of law and shall be published promptly by the Secretary of State.

The Supreme Court shall have original and exclusive jurisdiction over actions concerning redistricting the House and Senate, which shall be initiated in the name of the People of the State by the Attorney General.

The General Assembly must be redistricted after each decennial federal Census. Redistricting is to be undertaken initially by the General Assembly. If it fails, the legislative leaders are to appoint an eight-member redistricting commission to draw up a districting plan. The history of redistricting under the 1970 Constitution is summarized below.

1971 redistricting

The General Assembly failed to agree on a redistricting plan, and a redistricting commission was appointed and drafted a redistricting plan. Hearing a suit challenging the plan, the Illinois Supreme Court held that this section does not violate the U.S. Constitution by denying participation in the redistricting process to groups other than the two major parties. But the court also held that some legislative leaders who had appointed themselves and their aides to the redistricting commission had thereby violated the intent behind this section.[10] Nonetheless, the court held the plan drawn up by the commission constitutionally acceptable, and adopted it as a provisional plan for the 1972 elections. In June 1973 the General Assembly adopted that plan of districting for the remainder of the decade.[11] In a 1974 case the Illinois Supreme Court held that senators elected in 1972 for 4-year terms need not run again in 1974; they could finish the 4-year terms for which they had been elected under the 1971 redistricting.[12]

1981 redistricting

The General Assembly again failed to agree on a redistricting plan; a commission created under this section failed to agree on a plan; and the tie-breaker provision of this section was used. The resulting commission plan was modified somewhat by the Illinois Supreme Court[13] and federal district court in Chicago[14] before taking effect.

1991 redistricting

The General Assembly passed a redistricting bill but the Governor vetoed it. Thus another redistricting commission was created. As in earlier decades, the commission was unable to agree on a redistricting plan, so a tie-breaking member was added. The commission then filed a plan, which the Illinois Attorney General challenged. The Illinois Supreme Court in a December 1991 order returned the plan to the Commission for further work. The court complained of getting inadequate information on which to judge the plan's validity, and pointed to several proposed districts as possibly violating the constitutional requirement of compactness, or as diluting the votes of particular racial groups (and thus violating the requirement of Article 3, section 3 that all elections be free and equal). The court threatened to order an at-large election unless a valid plan was proposed by a date in January 1992.[15]

The commission then proposed a revised redistricting plan, which the Illinois Supreme Court in a second opinion reluctantly approved. The court said it did so because the only other choices at that late time were to order an at-large election, or to hold a delayed special election for legislators. The court expressed frustration at Illinois' redistricting process, and invited the General Assembly to "correct this process" because "[t]he rights of the voters should not be part of a game of chance."[16] Three members of the court expressed the opinion that Illinois' provision for random selection of a tie-breaking member for a deadlocked legislative redistricting commission violates the Due Process clause of the Fourteenth Amendment to the U.S. Constitution.[17]

2001 redistricting

The General Assembly did not pass a redistricting bill. A legislative redistricting commission was named, but as in earlier decades did not agree on a redistricting plan, so a tie-breaking member was appointed. The enlarged commission filed a redistricting plan, which was challenged in the Illinois Supreme Court. That court upheld the plan over dissents by two members faulting the procedures used by the commission and the shapes of some resulting districts.[18] Challengers attacked the constitutionality of the tie-breaking procedure in a suit in federal district court, but the court held that this plan (reportedly unique among the states) was not unconstitutional—a decision that the U.S. Supreme Court affirmed without issuing an opinion.[19]

SECTION 4. ELECTION

Members of the General Assembly shall be elected at the general election in even-numbered years.

As indicated in the commentary to section 2, each legislative election applies to (1) all House seats and (2) all Senate seats that are completing a term, whether of 2 or 4 years. At the first election after a redistricting (in every year ending in "2"), all House *and* Senate seats are up for election.

SECTION 5. SESSIONS

(a) The General Assembly shall convene each year on the second Wednesday of January. The General Assembly shall be a continuous body during the term for which members of the House of Representatives are elected.

The provision for the General Assembly to be a continuous body throughout the biennium for which it was elected prevents any problem of bills from the first session of a 2-year General Assembly dying, or the General Assembly or its subordinate bodies ceasing to have official existence and authority, between sessions.

(b) The Governor may convene the General Assembly or the Senate alone in special session by a proclamation stating the purpose of the session; and only business encompassed by such purpose, together with any impeachments or confirmation of appointments shall be transacted. Special sessions of the General Assembly may also be convened by joint proclamation of the presiding officers of both houses, issued as provided by law.

A statute sets the procedure for the leaders of both houses to call a special session.[20] A 1972 Attorney General's opinion advised on several questions about the conduct of special sessions.[21]

(c) Sessions of each house of the General Assembly and meetings of committees, joint committees and legislative commissions shall be open to the public. Sessions and committee meetings of a house may be closed to the public if two-thirds of the members elected to that house determine that the public interest so requires; and meetings of joint committees and legislative commissions may be so closed if two-thirds of the members elected to each house so determine.

This provision complements the Open Meetings Act, which applies to almost all governmental bodies operating under the state's authority but explicitly exempts the General

Assembly and its committees and commissions.[22] Since the latter are covered by this constitutional provision rather than the Act, none of the Act's exceptions apply to them. A related provision of this article is subsection 7(a), requiring committees and commissions of the General Assembly to give "reasonable public notice" of all meetings.

SECTION 6. ORGANIZATION

(a) A majority of the members elected to each house constitutes a quorum.

A "majority of the members elected to each house" means a majority of its full intended membership, regardless of deaths, resignations, or any other causes of vacancies. It is commonly called a "constitutional majority" because the Constitution requires such a majority for various kinds of actions, including passing bills (subsection 8(c)). A constitutional majority in the Senate is 30, and in the House is 60.

(b) On the first day of the January session of the General Assembly in odd-numbered years, the Secretary of State shall convene the House of Representatives to elect from its membership a Speaker of the House of Representatives as presiding officer, and the Governor shall convene the Senate to elect from its membership a President of the Senate as presiding officer.

The 1970 Constitution took from the Lieutenant Governor the office of Senate President, which the Lieutenant Governor had under the 1870 Constitution.

At the start of the 82nd General Assembly in 1981, the Senate had a dispute on electing a President because neither party could provide 30 votes to do so. The Governor, presiding over the Senate as called for in this subsection, declared that the vote needed to elect a President was only a majority of the members who were present and voting (with a quorum present), and declared elected as President the Republican candidate (who got 29 votes after virtually all Democratic members left the floor). But in a suit by Democratic members, the Illinois Supreme Court by a bare vote of 4 (including one justice who concurred only in the decision, not its reasoning) to 3 held that the Republican candidate had not been elected. The 3 justices comprising the core of the majority concluded that 30 votes are needed to elect the Senate President. The justice who concurred with them argued instead that the Senate can decide for itself how many votes are needed, but that it had not done so and therefore no valid election had occurred.[23] The Governor afterward reconvened the Senate, and the Democratic candidate was elected with 30 votes.[24]

(c) For purposes of powers of appointment conferred by this constitution, the Minority Leader of either house is a member of the numerically strongest political party other than the party to which the Speaker or the President belongs, as the case may be.

The 1870 Constitution did not mention minority leaders. The 1970 Constitution gives them formal status and duties, such as in naming members to a legislative redistricting commission (subsection 3(b)).

(d) Each house shall determine the rules of its proceedings, judge the elections, returns and qualifications of its members and choose its officers. No member shall be expelled by either house, except by a vote of two-thirds of the members elected to that house. A member may be expelled only once for the same offense. Each house may punish by imprisonment any person, not a member, guilty of disrespect to the house by disorderly or contemptuous behavior in its presence. Imprisonment shall not extend beyond twenty-four hours at one time unless the person persists in disorderly or contemptuous behavior.

Under the first sentence, each election contest for a legislative seat must be determined by the house to which the election applies. The U.S. Constitution provides similarly for Congress.[25] Although this could be awkward if a large number of seats in one house were contested, it prevents the difficulty that could result if courts were called on to decide election contests of an equal branch of government.

SECTION 7. TRANSACTION OF BUSINESS

(a) Committees of each house, joint committees of the two houses and legislative commissions shall give reasonable public notice of meetings, including a statement of subjects to be considered.

No reported court decision has construed the phrase "reasonable public notice of meetings" as used in this provision. It is the practice in the General Assembly to post notices of committee and commission meetings outside the rooms where they will be held. In addition, they are listed in a weekly Legislative Information System (LIS) publication that is available to legislators, and on LIS data terminals in the State House complex that are available to legislators and the news media.

(b) Each house shall keep a journal of its proceedings and a transcript of its debates. The journal shall be published and the transcript shall be available to the public.

This provision was new in the 1970 Constitution. Thus transcripts of the actual words spoken in sessions of each house are not available for the time before July 1, 1971, when most of the 1970 Constitution (including this provision) took effect. Transcripts are prepared from audiotapes of discussion on the floor. Legislative journals, giving only a summary of actions in each house, are available back to the 1830s.

(c) Either house or any committee thereof as provided by law may compel by subpoena the attendance and testimony of witnesses and the production of books, records and papers.

A 1974 Illinois Appellate Court decision held that despite this subsection, a legislative committee or subcommittee does not have authority to subpoena witnesses without a specific delegation of authority from its house.[26]

SECTION 8. PASSAGE OF BILLS

(a) The enacting clause of the laws of this State shall be: "Be it enacted by the People of the State of Illinois, represented in the General Assembly."

(b) The General Assembly shall enact laws only by bill. Bills may originate in either house, but may be amended or rejected by the other.

These formal requirements ensure that to have the force of law, a piece of writing must be explicitly labeled as a bill by having the enacting clause at the beginning, and must be passed as a bill and signed by the Governor or have the Governor's veto overridden. Thus the Illinois Supreme Court held long ago that a joint resolution, which is merely passed by both houses, cannot have the force of law like an enacted bill.[27]

(c) No bill shall become a law without the concurrence of a majority of the members elected to each house. Final passage of a bill shall be by record vote. In the

Senate at the request of two members, and in the House at the request of five members, a record vote may be taken on any other occasion. A record vote is a vote by yeas and nays entered on the journal.

(d) A bill shall be read by title on three different days in each house. A bill and each amendment thereto shall be reproduced and placed on the desk of each member before final passage.

Bills, except bills for appropriations and for the codification, revision or rearrangement of laws, shall be confined to one subject. Appropriation bills shall be limited to the subject of appropriations.

A bill expressly amending a law shall set forth completely the sections amended.

The Speaker of the House of Representatives and the President of the Senate shall sign each bill that passes both houses to certify that the procedural requirements for passage have been met.

Subsection 8(d) contains several important requirements, which are discussed below.

Reading by title on three days

This requirement was intended to allow some deliberation in the legislative process and give legislators and the public an opportunity to learn about bills before they are voted on. But its effectiveness has been greatly reduced by the "enrolled bill rule" discussed below under "Leaders' signatures to certify procedural compliance." Under that rule, the signatures of the Speaker of the House and President of the Senate have been held to be conclusive evidence that a bill was properly passed, even though the entire text enacted had been substituted, on Second Reading in the Senate, for a completely different text that had earlier passed the House.[28]

Single subject

The 1870 Constitution required that each bill be limited to a single subject, and also required that the subject be expressed in the bill's title.[29] The 1970 Constitution eliminated the requirement of expressing the subject in the title, but made no change in the requirement that a bill be limited to one subject.

The single-subject requirement is intended partly to prevent "log-rolling" (putting diverse provisions in a bill to appeal to various groups of legislators, most of whom would not vote for individual parts if each part were put to a separate vote).[30] It is also intended to prevent surprise of legislators and the public by inclusion in a bill of provisions they did not suspect it contained. Such provisions in state constitutions result from a 1795 Georgia law that was slipped past legislators with a provision selling land to speculators for nearly nothing.[31] Illinois courts have said that the single-subject requirement does not limit how comprehensive a bill can be, if the matters with which it deals have a natural or logical connection.[32] And an act amending a comprehensive law may contain any provision that might have been included in the law being amended without violating this section.[33]

But a law is invalid if it includes "incongruous and unrelated matters"[34] or "discordant provisions that by no fair intendment can be considered as having any legitimate relation to each other."[35] A clear example was a 1972 law attempting to take away local powers to regulate many different occupations and professions by listing state laws that regulated those fields and saying that the state's regulation of them was exclusive. The Illinois Supreme Court held that this law violated the single-subject requirement, in addition to other constitutional provisions.[36]

Later cases have supported that holding. Major recent cases decided by the Illinois Supreme Court on the single-subject requirement are described below.

Laws held invalid

In 1997 the Illinois Supreme Court struck down an act that created a child sex offender notification law; changed some sex crimes; imposed a tax on petroleum-based fuels to pay environmental costs; changed penalties for marijuana possession; changed provisions on granting of parole; allowed some kinds of monitoring by employers of employees' telephone conversations with customers; and changed provisions on courts' holding hearings on defendants' fitness to stand trial, among other topics addressed.[37]

In 1999 the Illinois Supreme Court struck down an act that addressed the duties and jurisdictions of local law-enforcement agencies; the insanity defense; convictions of and penalties for drug crimes; lengths of prison time to be actually served by persons convicted of several kinds of violent crimes; forfeitures of assets used in drug crimes; and hospital liens.[38] The court commented that "the most lenient examination of the Act shows that its contents encompass at least two unrelated subjects: matters relating to the criminal justice system, and matters relating to hospital liens."[39] Other 1999 cases struck down an act that addressed mostly criminal matters, but also included a provision on mortgage foreclosures;[40] and an act that addressed several violent-crime issues but also had provisions on licensing of residential youth-care facilities and civil penalties for violations of regulations under the Special Supplemental Nutritional Program for Women, Infants, and Children (WIC).[41]

A 2001 Illinois Supreme Court decision struck down an act that addressed the following topics: penalties for disorderly conduct; making a false call to a "911" center; allowable delays in hearings in juvenile court regarding abused, neglected, or dependent children; and "no-knock" entry by police with a search warrant in described situations.[42]

In 2004 the Illinois Supreme Court struck down an act that addressed several issues of criminal law (which the court said was proper), but also addressed the Attorney General's authority to file counterclaims on behalf of state employees who are sued civilly.[43]

Laws upheld

In 1999 the Illinois Supreme Court upheld the fiscal year 1996 budget implementation act (with two dissenting votes).[44] The majority said that unlike the acts it had held to violate the single-subject rule, the budget implementation act was aimed at a single goal: adjusting the state's spending to match revenues. Thus even though it addressed many specific topics, the court said they were encompassed within a single subject:

> In enacting Public Act 89-21, the General Assembly was not attempting to unite obviously discordant provisions under some broad and vague category. To the contrary, the legislature's expressed purpose for Public Act 89-21 was to implement the state's budget for the 1996 fiscal year. The legislature therefore included within that enactment all the means reasonably necessary to accomplish its purpose.[45]

In 2000 the Illinois Supreme Court (again with two dissents) upheld an act that (1) allowed county collectors to cease trying to sell mineral rights for nonpayment of taxes if 10 consecutive years of offering them for sale were unsuccessful, and (2) changed the law on conditions in which real estate held in a tenancy by the entirety can be sold for debts of one of the spouses who hold in it that form of tenancy.[46] The majority considered the subject of that act to be property law.

A 2002 Illinois Supreme Court case upheld an act that made a number of changes to various areas of law, reasoning that all addressed the topics of criminal law and corrections which are related to each other.[47]

An examination of these cases shows that Illinois courts try to uphold laws against single-subject attacks. If it can plausibly be argued that all parts of an act have the same overall purpose, a single-subject challenge is likely to fail. Furthermore, that purpose can be quite broad—such as balancing the state budget, or preventing crime—if the act does indeed address it broadly. The acts that were held invalid did not deal broadly with any subject.

Instead, each of them seemed to have been fashioned from several very specific provisions, which usually had been introduced as separate bills. Such combinations of provisions are at risk from single-subject challenges.

Appropriations bills limited to appropriations

The restriction of appropriations bills to appropriations is partly for the purpose of preserving the separation of powers between the legislative and executive branches. It prohibits inclusion of substantive provisions in an appropriations bill, which the Governor might feel compelled to sign immediately to keep the state government operating.[48] Under this requirement, the Illinois Supreme Court invalidated a section in a bill appropriating funds to the state Department of Labor that attempted to prohibit establishment of a Department office within 500 feet of a school,[49] and a section in another appropriations act attempting to authorize some federal grants to be spent without appropriation by the General Assembly. The court said that provision was not an appropriation.[50]

On the other hand, inclusion in a tax act of a provision allocating the proceeds of the tax did not convert the act into an appropriations measure and thus violate this requirement.[51] And in an early case under the 1970 Constitution, the Supreme Court upheld a provision in a transportation bond act which declared that it was a continuing, irrevocable appropriation of money to pay off the bonds if the General Assembly failed to do so. The court said that to the extent the statutory provision conflicted with this subsection, it was authorized by Article 9, subsection 9(b)—which says "[a]ny law providing for the incurring or guaranteeing of [state] debt shall set forth the specific purposes and the manner of repayment."[52]

Amended sections to be set forth completely

This requirement prevents the express amendment of laws by merely referring to them by title and section. It does not prevent a new law from affecting by implication the operation of another law.[53] The Illinois Supreme Court has said:

> Where a law is complete in itself, it is valid although its effect may be to repeal, modify, or amend existing laws by implication. . . . It is not necessary, when a new act is passed, that all prior acts modified by it by implication shall be reenacted and published at length.[54]

On the other hand, two acts that attempted to amend existing statutes by naming their titles without setting forth the texts of the sections to be amended have been held unconstitutional.[55]

Probably the closest case under this requirement involved an amendment to the Insurance Code. Part of the amendment said that an existing section of the Code, not set forth, would deny certain powers to home-rule units. The existing section had not previously restricted home-rule units because it was enacted under the 1870 Constitution; and as discussed below under Article 7, section 6, such pre-1970 Constitution laws do not limit home-rule powers. The Illinois Supreme Court held that the amendatory law was proper and restricted home-rule powers.[56]

Different amendments by same General Assembly

The "set forth completely" requirement can result in significant confusion if multiple bills to amend the same section are introduced in a session of the General Assembly, and two or more of them become law. Since they usually were drafted months before becoming law, in "set[ting] forth completely" the section(s) to be amended, each bill shows the former version of everything in a section that it does not propose to amend. For example, one bill might change only subsection (a) of a section, while another bill changes only subsection (c) of the same section. If the Governor signs both bills, the result is a Public Act containing a new version of subsection (a) and the old versions of subsections (b) and (c), and another Public Act containing a new version of subsection (c) but the old versions of subsections (a) and (b). Some persons who are unfamiliar with legislative practice (and with this provision) incor-

rectly think that the act passed later by the General Assembly reinstates the old version of everything that it sets forth but does not show as having been amended. Thus they believe that if an act changing subsection (c) of some statutory section was passed later by the General Assembly, it repeals the change another act had just made to subsection (a).

As noted, that belief is incorrect. In the example given, both subsection (a) as amended by the one act and subsection (c) as amended by the other act become parts of the section (each on its effective date). This reflects the simple fact that under this Constitution's "set forth completely" requirement, each bill to amend any part of a statutory section *must* include the existing version of every part of that section that is not being amended. Thus, inclusion in the bill (and the resulting Public Act) of the old versions of other parts of the section does not show any legislative purpose to override other bills that may propose to amend those old versions. It is simply mandated by the Constitution's "set forth completely" requirement. This fact has been stated several times by the Illinois Supreme or Appellate Court in cases under both the 1870 and the 1970 Constitutions.[57]

(Confusingly, a few Illinois cases can be read as saying the opposite. These cases repeated a statement from a 1937 case[58] that if two laws amend the same section, and the one passed later omits something contained in the one passed earlier, this indicates a legislative intent to repeal the provision in the one passed earlier.[59] But the Illinois Supreme Court has also stated that this was only a principle to help determine legislative intent, not a fixed rule for statutory construction.[60] Furthermore, it appears that only one case citing the 1937 statement has been decided since the General Assembly began the practice of striking through all text that is to be deleted by an amendatory bill; and that case[61] was interpreting a county ordinance rather than a state law. The practice of striking through text to be deleted, adopted in 1969, makes completely clear which parts of a section a bill proposes to delete, and which provisions are not in it simply because they did not exist when it was drafted.)

Leaders' signatures to certify procedural compliance

This provision was intended to put into the Constitution the "enrolled bill rule" under which the signatures of the legislative leaders are conclusive evidence that procedural requirements have been followed. The Illinois Supreme Court has held that this rule applies to the requirement in this subsection that each bill be read on 3 days; the court refused to invalidate laws for alleged failure to have been read on 3 days because the signatures were properly placed on them.[62] But the Illinois Supreme Court more recently warned that it may not allow regular legislative violation of the requirement of reading each bill on three days in each house.[63]

The Illinois Supreme Court has held that this "enrolled bill" rule does not apply to the requirements that each bill address only one subject, and that appropriations measures be limited to appropriations. The court examines the text of each law questioned under these provisions to determine whether it complies with them.[64]

SECTION 9. VETO PROCEDURE

(a) Every bill passed by the General Assembly shall be presented to the Governor within 30 calendar days after its passage. The foregoing requirement shall be judicially enforceable. If the Governor approves the bill, he shall sign it and it shall become law.

(b) If the Governor does not approve the bill, he shall veto it by returning it with his objections to the house in which it originated. Any bill not so returned by the Governor within 60 calendar days after it is presented to him shall become law. If recess or adjournment of the General Assembly prevents the return of a bill, the bill and the Governor's objections shall be filed with the Secretary of State within such 60 calendar days. The Secretary of State shall return the bill and objections to the originating house promptly upon the next meeting of the same General Assembly at which the bill can be considered.

(c) The house to which a bill is returned shall immediately enter the Governor's objections upon its journal. If within 15 calendar days after such entry that house by a record vote of three-fifths of the members elected passes the bill, it shall be delivered immediately to the second house. If within 15 calendar days after such delivery the second house by a record vote of three-fifths of the members elected passes the bill, it shall become law.

(d) The Governor may reduce or veto any item of appropriations in a bill presented to him. Portions of a bill not reduced or vetoed shall become law. An item vetoed shall be returned to the house in which it originated and may become law in the same manner as a vetoed bill. An item reduced in amount shall be returned to the house in which it originated and may be restored to its original amount in the same manner as a vetoed bill except that the required record vote shall be a majority of the members elected to each house. If a reduced item is not so restored, it shall become law in the reduced amount.

(e) The Governor may return a bill together with specific recommendations for change to the house in which it originated. The bill shall be considered in the same manner as a vetoed bill but the specific recommendations may be accepted by a record vote of a majority of the members elected to each house. Such bill shall be presented again to the Governor and if he certifies that such acceptance conforms to his specific recommendations, the bill shall become law. If he does not so certify, he shall return it as a vetoed bill to the house in which it originated.

This section establishes the Governor's veto powers, which are among the most extensive in the nation. There are four kinds of vetoes: a total veto which can apply to any bill; item and reduction vetoes for appropriation bills; and an amendatory veto for non-appropriation bills.

The reduction and amendatory veto powers that this section gave the Governor, when added to the item veto power that existed under the previous Constitution, allow the Governor the option of changing bills if he basically approves of them but finds some parts unacceptable. If the General Assembly disagrees with a Governor's veto, amendatory veto, or item veto, it can override it by vote of three-fifths of the members elected to each house. Restoration of an amount reduced by the Governor, or acceptance of the Governor's amendatory recommendations, requires only a majority of the members elected to each house.

The cases arising under these veto provisions have resulted from uncertainty about two things: the scope of the Governor's amendatory veto power, and the effective date of laws amendatorily vetoed (which is discussed under section 10 below). As to the scope of amendatory vetoes, the Illinois Supreme Court has stated that an amendatory veto may not propose a completely new bill;[65] change the fundamental purpose of a bill; or make "substantial or expansive changes" in it.[66] However, the court has held that the Governor may make more than technical corrections.[67] Indeed, the voters in 1974 rejected a proposed constitutional amendment to restrict the Governor's amendatory veto power to technical corrections and matters of form.[68]

The court has upheld amendatory vetoes, agreed to by the General Assembly, that (1) reduced the rate of the additional corporate income tax that partially replaced the personal property tax from 2.85% to 2.5%; (2) made several changes in an urban renewal bill, which the court described as minor improvements dealing with the "clarity, fairness and practical requirements" of the bill;[69] and (3) made many changes to a bill on labor relations for public employees, including extending it to cover a bi-state agency, restricting injunctions against strike-related activity, prohibiting mandatory "fair share" payments from going to political candidates, and adding two state department directors to the body that considers decisions by arbitrators following an impasse between unionized employees and a unit of government.[70]

Another innovation in this section is placing a time limit of 30 days on the transmission of bills to the Governor. After receiving a bill, the Governor has 60 days to act on it or it automatically becomes law.

SECTION 10. EFFECTIVE DATE OF LAWS

> **The General Assembly shall provide by law for a uniform effective date for laws passed prior to June 1 of a calendar year. The General Assembly may provide for a different effective date in any law passed prior to June 1. A bill passed after May 31 shall not become effective prior to June 1 of the next calendar year unless the General Assembly by the vote of three-fifths of the members elected to each house provides for an earlier effective date.**

The uniform effective date now provided by law is January 1 of the year following passage.[71] Thus the way effective dates work for bills that are approved by the Governor is as follows: If a bill is passed before the intended session cutoff of midnight May 31, it takes effect the following January 1 unless its text states a different effective date. If it is passed after May 31, it cannot take effect before June 1 of the next year unless its text states a different effective date *and* it is passed by at least three-fifths of the members elected to each house.

Until the voters approved an amendment to this section in 1994,[72] the intended session cutoff date was June 30. An accompanying statute formerly said that bills passed after June 30 without three-fifths majorities would take effect the following July 1. A 1994 act changed that date to June 1 and provided transitional provisions for bills passed in 1994.[73]

Effective dates of bills vetoed but later enacted

The main problem with this section has been determining when a bill that is vetoed, amendatorily vetoed, or item vetoed but later enacted is "passed" for effective-date purposes. The Illinois Supreme Court has developed these rules in cases that came before it:

- If a bill is initially passed before midnight of the intended session cutoff date (now May 31) and then amendatorily vetoed, its date of "pass[age]" is when the General Assembly later accepts the Governor's recommendations.[74] Assuming that occurs after the intended cutoff date, the new law cannot take effect until June 1 of the next year unless it contains an earlier effective date and is passed by three-fifths of the members elected to each house.
- On the other hand, if a bill is totally vetoed and the General Assembly overrides that veto, its date of "passage" is the original passage date.[75] Thus if it was originally passed before midnight of the cutoff date (now May 31) it can take effect the following January 1—or whenever its text provides.

The rationale for this different treatment is the public's different needs for information about the texts of totally versus amendatorily vetoed bills. If a bill is totally vetoed, its text is potentially available and can be read by persons who may be affected by it; if it becomes law through override, they can know whether it applies to them. But if a bill is amendatorily vetoed, it may not get its final form until the General Assembly votes to accept the Governor's recommendations (if it does so). Thus a later effective date is needed to allow the public time to become informed about the new law's provisions.

If a bill is amendatorily vetoed but that veto is overridden, its date of "passage" for effective-date purposes apparently is the date of its original passage.[76]

All of these rules on effective dates are subject to one additional rule: A law's effective date cannot precede the day it becomes law.[77] Thus, for example, if a bill is passed before midnight May 31 and says that it takes effect on July 15 of that year, but the Governor signs it on August 8, the effective date of the resulting law is August 8. (However, on at least one occasion—in 1984—the Illinois Supreme Court has applied a change in law that had been passed by the General Assembly but was not yet effective when the relevant events took place. The General Assembly passed a bill to change the criteria for the death penalty shortly before a murder was committed, but its enactment was delayed by an amendatory veto of an unrelated part of the bill. Applying that change to the defendant benefited him by making him ineligible for the death penalty.[78])

SECTION 11. COMPENSATION AND ALLOWANCES

A member shall receive a salary and allowances as provided by law, but changes in the salary of a member shall not take effect during the term for which he has been elected.

This section is only slightly revised from a provision in the 1870 Constitution. In an Appellate Court case, the General Assembly's 1978-79 "lame duck" pay increase, voted after the 1978 election but before the 1979 session began, was held not to violate this section although many members-elect of the 81st General Assembly voted on the bill in the 80th.[79]

Based on court cases holding that this and similar constitutional provisions merely require that the method of determining a salary be fixed before an officer's term—not that the actual amount of salary be fixed—the Attorney General in 1978 advised that a law enacted before the beginning of an officer's term could validly provide periodic pay increases during that term based on an objective index of the rate of inflation.[80]

In 1985 the Illinois Supreme Court upheld the Compensation Review Act, under which salaries for legislators, major executive officers, and judges are recommended by the Compensation Review Board and, if not disapproved by the General Assembly, thereafter take effect. The court said this was sufficient compliance with the constitutional requirement that salaries be "provided by law."[81] The Board has provided for periodic increases in the pay of legislators and other high state officers based in part on an inflation index.

In 1990 the Illinois Supreme Court held under this section that an increase in the extra pay for legislative and committee leaders could not constitutionally take effect during the terms for which they were elected.[82]

SECTION 12. LEGISLATIVE IMMUNITY

Except in cases of treason, felony or breach of peace, a member shall be privileged from arrest going to, during, and returning from sessions of the General Assembly. A member shall not be held to answer before any other tribunal for any speech or debate, written or oral, in either house. These immunities shall apply to committee and legislative commission proceedings

The immunity provided in the first sentence is largely outdated, since it applies only to civil arrest (which almost never occurs anymore). It does not immunize a legislator from arrest for criminal offenses such as speeding.[83]

The second sentence, which is similar to the "Speech or Debate" clause in the U.S. Constitution, is still important. It protects legislators from defamation suits for their statements in the course of legislating, including service on committees and commissions. But legislators' statements made outside the legislative environment (such as in newsletters to constituents) apparently are not protected by this provision.[84]

SECTION 13. SPECIAL LEGISLATION

The General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination.

Either of the following kinds of legislative actions may be held to violate the restriction on local or special laws:

(1) Making a law apply to one or more particular persons or things named in the law.

(2) Making a law apply to a described class of persons or things that is illogical and unfair. The latter violation overlaps with the prohibition on denying equal protection of the laws in Article 1, section 2, and is determined under the same standards.[85]

The General Assembly must sometimes name specific localities, universities, state contractors, and the like in laws appropriating money to them or otherwise making specific provisions for them. These laws are allowed because a general law cannot be made applicable to such particular subjects.[86] But if the courts conclude that a special or local law is being used to give an unfair advantage to, or impose an unfair burden on, one or a small group of persons or things, the law will be held to violate this section.

Population classifications

Chicago and Cook County obviously present potential problems, since they are unique in Illinois in the sizes of their populations. But the Illinois courts have held that a law may apply to a class of localities determined by population (such as all cities or counties above some population threshold), even though there is now only one member of the class, *if* there is a valid reason for that law to treat populous localities differently from less populous ones.[87] However, several laws discriminating among municipalities or counties based on arbitrary population classifications have been held to lack any rational basis and thus be invalid under this section.[88] This fate is particularly likely to befall a law that applies to local governments that are between some stated population and some other stated population (rather than to all local governments that are below, or all that are above, some population), or a law that for some other reason applies to only one or a few local governments that are not clearly different from other governments.

Other issues

The Illinois courts have upheld against attack under this section statutes of limitation that set strict time limits for bringing suits for particular kinds of harm: for medical malpractice, 2 years after discovery and in any event 4 years after any negligent act;[89] and for construction defects, 2 years after discovery and in any event 12 years after any negligent act.[90]

The Illinois Supreme Court also upheld, by a 4-3 majority, a law requiring that each plaintiff in a medical malpractice case attach to the complaint an affidavit that a health professional has found reasonable cause for suit, and attach the health professional's report indicating the basis for that determination.[91] Among other grounds on which that law was challenged, plaintiffs had claimed that it violated this section by applying only to medical malpractice suits. The court also upheld laws that authorize local governments in populous areas to require developers to pay fees to defray costs of additional traffic caused by their developments.[92]

The Illinois Supreme Court in 2001 upheld an act that relieved health-care providers of the existing requirement to plead "special damages" (harm beyond the expenses and inconvenience of litigation) when suing unsuccessful malpractice plaintiffs for maliciously suing them. The court considered that act to be rationally based on the differences between the situations of health-care professionals and others who are sued.[93] On the other hand, the Illinois Supreme Court in 1997 struck down a law that placed a $500,000 limit on compensatory damages for noneconomic injuries in personal injury cases.[94] And in 2003 the court struck down a law that made it harder for plaintiffs to sue automobile dealers alleging consumer fraud than to sue similar defendants on that basis.[95]

SECTION 14. IMPEACHMENT

The House of Representatives has the sole power to conduct legislative investigations to determine the existence of cause for impeachment and, by the vote of a majority of the members elected, to impeach Executive and Judicial officers. Impeachments shall be tried by the Senate. When sitting for that purpose, Senators shall be upon oath, or affirmation, to do justice according to law. If the Governor is tried,

the Chief Justice of the Supreme Court shall preside. No person shall be convicted without the concurrence of two-thirds of the Senators elected. Judgment shall not extend beyond removal from office and disqualification to hold any public office of this State. An impeached officer, whether convicted or acquitted, shall be liable to prosecution, trial, judgment and punishment according to law.

Impeachment proceedings are extremely rare in Illinois. Apparently only one judge has been impeached by the House in the state's entire history (in 1833); the Senate did not convict.[96] Due to the rarity of impeachment, neither house of the General Assembly has permanent rules to govern it. However, a House Special Investigative Committee in 1997 adopted 20 rules to govern impeachment procedures for then-Chief Justice James Heiple of the Illinois Supreme Court,[97] which likely would be consulted if future impeachment proceedings are contemplated.

In a 1969 case decided under the 1870 Constitution, the Illinois Supreme Court held that a legislative investigation of alleged improprieties by some members of the Illinois Supreme Court was unauthorized.[98] This section overruled that case, making it clear that the House of Representatives may conduct investigations that *might* lead to impeachment of executive or judicial officers, in addition to its authority actually to impeach such officers.

SECTION 15. ADJOURNMENT

(a) When the General Assembly is in session, neither house without the consent of the other shall adjourn for more than three days or to a place other than where the two houses are sitting.

(b) If either house certifies that a disagreement exists between the houses as to the time for adjourning a session, the Governor may adjourn the General Assembly to a time not later than the first day of the next annual session.

A Governor who adjourns the General Assembly is said to "prorogue" the session. In 1963 the Governor did this at the request of the House, and the Illinois Supreme Court later held that his action was effective despite the refusal of members of the Senate of the other party to acknowledge his action and leave the Senate chamber.[99]

Article 5. The Executive

The Executive Article describes in general terms the basic powers and duties of each of the state's elected executive officers. It continues the practice of having each principal executive officer elected. But unlike previous Illinois Constitutions, it also provides for the Lieutenant Governor to be elected on the same ticket as the Governor.

SECTION 1. OFFICERS

> **The Executive Branch shall include a Governor, Lieutenant Governor, Attorney General, Secretary of State, Comptroller and Treasurer elected by the electors of the State. They shall keep the public records and maintain a residence at the seat of government during their terms of office.**

This section lists what are commonly called the "constitutional" executive officers—those whose offices are created by the Constitution. Their powers and duties are described in sections 8 through 18. The Illinois Supreme Court, under similar provisions of the 1870 Constitution, said the General Assembly cannot take away any of these constitutional powers.[1] But the court also said the General Assembly may add duties that are not inconsistent with those granted by the Constitution.[2]

SECTION 2. TERMS

> **These elected officers of the Executive Branch shall hold office for four years beginning on the second Monday of January after their election and, except in the case of the Lieutenant Governor, until their successors are qualified. They shall be elected at the general election in 1978 and every four years thereafter.**

Under the 1870 Constitution, executive officers were elected in the same years as U.S. Presidents. The 1970 Constitution's Transition Schedule continued this practice through the 1976 election; but beginning in 1978, the state's executive officers have been elected in even-numbered years that are not Presidential election years. This was intended to allow voters to concentrate their attention on the state election contests in those years.

SECTION 3. ELIGIBILITY

> **To be eligible to hold the office of Governor, Lieutenant Governor, Attorney General, Secretary of State, Comptroller or Treasurer, a person must be a United States citizen, at least 25 years old, and a resident of this State for the three years preceding his election.**

The statement in the Constitution of requirements for election to executive office probably prevents a statute from adding further requirements.[3]

SECTION 4. JOINT ELECTION

In the general election for Governor and Lieutenant Governor, one vote shall be cast jointly for the candidates nominated by the same political party or petition. The General Assembly may provide by law for the joint nomination of candidates for Governor and Lieutenant Governor.

At the time of the 1970 constitutional convention, the Governor and Lieutenant Governor were of different political parties, which the convention believed to be a source of friction. While this section requires candidates for Governor and Lieutenant Governor to run as teams in the general election, the General Assembly has not chosen to provide for them to run together in the primary election.[4]

SECTION 5. CANVASS—CONTESTS

The election returns for executive offices shall be sealed and transmitted to the Secretary of State, or other person or body provided by law, who shall examine and consolidate the returns. The person having the highest number of votes for an office shall be declared elected. If two or more persons have an equal and the highest number of votes for an office, they shall draw lots to determine which of them shall be declared elected. Election contests shall be decided by the courts in a manner provided by law.

A section of the Election Code that formerly provided for statewide election contests to be decided by a specially appointed three-judge panel of trial judges was held unconstitutional by the Illinois Supreme Court in 1983; the court said that panel was not one of the constitutionally created "courts" that this section says are to decide election contests.[5] The General Assembly replaced that provision with a section providing for the Illinois Supreme Court to have jurisdiction over statewide election contests.[6]

SECTION 6. GUBERNATORIAL SUCCESSION

(a) In the event of a vacancy, the order of succession to the office of Governor or to the position of Acting Governor shall be the Lieutenant Governor, the elected Attorney General, the elected Secretary of State, and then as provided by law.

This section does not use the word "elected" before "Lieutenant Governor" because there is no provision for appointing a replacement Lieutenant Governor if the elected one leaves office before a successor is elected (see section 7's last sentence). A 1981 law provides for the line of succession after the elected Secretary of State to be as follows: the elected Comptroller, the elected Treasurer, the President of the Senate, and the Speaker of the House.[7]

(b) If the Governor is unable to serve because of death, conviction on impeachment, failure to qualify, resignation or other disability, the office of Governor shall be filled by the officer next in line of succession for the remainder of the term or until the disability is removed.

(c) Whenever the Governor determines that he may be seriously impeded in the exercise of his powers, he shall so notify the Secretary of State and the officer next in line of succession. The latter shall thereafter become Acting Governor with the duties and powers of Governor. When the Governor is prepared to resume office, he shall do so by notifying the Secretary of State and the Acting Governor.

(d) The General Assembly by law shall specify by whom and by what procedures the ability of the Governor to serve or to resume office may be questioned and determined. The Supreme Court shall have original and exclusive jurisdiction to review such a law and any such determination and, in the absence of such a law, shall make the determination under such rules as it may adopt.

No statute establishes procedures for questioning the ability of the Governor to serve or resume service. An Illinois Supreme Court rule issued under the authority of this subsection provides in broad outline for the filing of original actions in the Supreme Court to resolve such questions.[8] In addition, Illinois' Emergency Interim Executive Succession Act provides that, in the event of an attack on the United States, the powers of executive officers at state and local levels would be exercised by successors whom those officers had designated by title.[9]

SECTION 7. VACANCIES IN OTHER ELECTIVE OFFICES

If the Attorney General, Secretary of State, Comptroller or Treasurer fails to qualify or if his office becomes vacant, the Governor shall fill the office by appointment. The appointee shall hold office until the elected officer qualifies or until a successor is elected and qualified as may be provided by law and shall not be subject to removal by the Governor. If the Lieutenant Governor fails to qualify or if his office becomes vacant, it shall remain vacant until the end of the term.

Some delegates at the 1970 constitutional convention wanted to abolish the office of Lieutenant Governor. The convention decided to keep the office but not fill any vacancy in it between elections. To do so would have been largely futile, since the convention was unwilling to let any executive officer who had been appointed to fill a vacancy take over the Governorship (see section 6), and the Lieutenant Governor had few official duties other than standing ready to do that.

SECTION 8. GOVERNOR—SUPREME EXECUTIVE POWER

The Governor shall have the supreme executive power, and shall be responsible for the faithful execution of the laws.

This is the first of several sections setting forth the powers of the Governor. This section states the powers that are most general. The Illinois Supreme Court has commented that this provision does not empower the Governor to establish new legal requirements by executive order or otherwise; as to persons not under his jurisdiction, he may only execute and enforce existing law.[10] The Governor does have control over agencies under him through his power to remove subordinates (section 10) and his authority (recognized under Article 13, section 2) to establish ethical standards for agencies under him.[11]

SECTION 9. GOVERNOR—APPOINTING POWER

(a) The Governor shall nominate and, by and with the advice and consent of the Senate, a majority of the members elected concurring by record vote, shall appoint all officers whose election or appointment is not otherwise provided for. Any nomination not acted upon by the Senate within 60 session days after the receipt thereof shall be deemed to have received the advice and consent of the Senate. The General Assembly shall have no power to elect or appoint officers of the Executive Branch.

The Illinois Supreme Court has long held that the Governor's power to appoint "all officers whose election or appointment is not otherwise provided for" applies only to officers at the state rather than lower levels, and is merely a catchall provision to deal with officers for whom no other method of appointment is provided.[12] The General Assembly may provide for someone other than the Governor to appoint any officer whose selection is not governed by the Constitution, if the method chosen does not violate any specific constitutional restriction (such as this subsection's prohibition on appointment of executive officers by the General Assembly). The Illinois Supreme Court has held that the Governor could not be required by law to appoint members of the State Board of Elections from nominations made by legislative leaders,[13] and that legislative leaders could not appoint members of the State Fair Board,[14] since both agencies exercised substantial executive functions and the court concluded that their members were officers of the executive branch for purposes of this subsection.

A federal district court in 2003 ruled on appointments that former Governor George H. Ryan had made to the Illinois Industrial Commission (now called the Illinois Workers' Compensation Commission). Ryan had attempted simultaneously to appoint one person to a seat on the Commission for a few months, and to appoint another person to that same seat effective at the end of that time—even though the statute creating the Commission gives each member a 4-year term.[15] The federal district judge denied a preliminary injunction barring the second member from being removed by the next Governor, holding that Governor Ryan's second appointment to the seat had been invalid because he could not make appointments for anything other than the statutory 4-year term (except to fill vacancies created by death, resignation, or other legally valid causes).[16] Although this case involved mostly statutory interpretation, it did emphasize the constitutional roles of both the Senate and the House in creating offices and confirming nominations to them.

> **(b) If, during a recess of the Senate, there is a vacancy in an office filled by appointment by the Governor by and with the advice and consent of the Senate, the Governor shall make a temporary appointment until the next meeting of the Senate, when he shall make a nomination to fill such office.**
>
> **(c) No person rejected by the Senate for an office shall, except at the Senate's request, be nominated again for that office at the same session or be appointed to that office during a recess of that Senate.**

These two subsections are intended to put some continuity into the appointment process so state government can continue during a recess of the Senate, and to prevent a Governor from taking advantage of a Senate recess to appoint temporarily a person whom the Senate earlier rejected.

SECTION 10. GOVERNOR—REMOVALS

> **The Governor may remove for incompetence, neglect of duty, or malfeasance in office any officer who may be appointed by the Governor.**

In a case decided over a century ago, the Illinois Supreme Court held that the Governor's determination that there was cause for removal under a similar provision could not be reviewed by the courts.[17] The practical effect of this holding was that officers of the executive branch appointed by the Governor served at the Governor's pleasure. This apparently is still so for officers directly under the Governor, including the heads of Civil Administrative Code departments. But in 1976 the Illinois Supreme Court held that members of the State Board of Elections, and probably other independent boards and commissions in the executive branch, can be removed only for a cause stated in this section, which can be judicially reviewed.[18] This holding was due to the need for those agencies to be objective and free from political pressure. The court found persuasive two U.S. Supreme Court decisions in 1935 and 1958 that had held similarly as to independent federal commissions.[19] As discussed under subsection 9(a) above, a federal district court in 2003 concluded that the Governor had

no power to appoint a second person to a seat on the Illinois Industrial Commission (now the Illinois Workers' Compensation Commission) before the term of the incumbent had legally ended, since that would have split the statutory 4-year term into shorter terms.[20]

The Illinois Supreme Court has held that this section, along with other sources of authority, enabled the Governor to require disclosure of economic interests by employees in departments and agencies under him.[21]

SECTION 11. GOVERNOR—AGENCY REORGANIZATION

The Governor, by Executive Order, may reassign functions among or reorganize executive agencies which are directly responsible to him. If such a reassignment or reorganization would contravene a statute, the Executive Order shall be delivered to the General Assembly. If the General Assembly is in annual session and if the Executive Order is delivered on or before April 1, the General Assembly shall consider the Executive Order at that annual session. If the General Assembly is not in annual session or if the Executive Order is delivered after April 1, the General Assembly shall consider the Executive Order at its next annual session, in which case the Executive Order shall be deemed to have been delivered on the first day of that annual session. Such an Executive Order shall not become effective if, within 60 calendar days after its delivery to the General Assembly, either house disapproves the Executive Order by the record vote of a majority of the members elected. An Executive Order not so disapproved shall become effective by its terms but not less than 60 calendar days after its delivery to the General Assembly.

This provision, modeled after a federal law,[22] allows the Governor to reorganize agencies under him if either (1) the reorganization would not contravene a statute or (2) it would contravene a statute but it is sent to the General Assembly and neither house objects within 60 days. This authority for reorganization one step at a time provides an alternative to reorganizations by statute, which historically have been infrequent but massive. The Executive Reorganization Implementation Act, enacted in 1979, sets forth procedures for reorganizations by the Governor and attempts to limit the kinds of reorganizations that can be made.[23] To give greater public notice of such reorganizations, it also requires that if an executive order providing for reorganization takes effect, it is to be printed by the Secretary of State in the state's session laws, and a bill incorporating the changes is to be drafted for consideration at the General Assembly's next annual session.[24]

SECTION 12. GOVERNOR—PARDONS

The Governor may grant reprieves, commutations and pardons, after conviction, for all offenses on such terms as he thinks proper. The manner of applying therefor may be regulated by law.

The Governor's longstanding power to grant pardons or other relief to convicted persons is continued, but made more flexible by allowing such grants "on such terms as he thinks proper" to allow conditional pardons.[25] As allowed by the second sentence, a section in the Unified Code of Corrections regulates procedures for applying for clemency.[26] The Illinois Supreme Court has held that a pardon from the Governor does not allow the pardoned person to have the record of arrest expunged under a law allowing such expunction if a person is arrested but released without conviction.[27]

Shortly before leaving office in January 2003, Governor George H. Ryan issued a blanket commutation of the death sentences of all persons sentenced to death in Illinois. The Attorney General challenged that action. The Illinois Supreme Court held that this section

gives a Governor essentially unlimited power to issue as many pardons (or commutations) as he wishes—even to prisoners who have not petitioned for clemency.[28] But the court's opinion concluded:

> As a final matter, we note that clemency is the historic remedy employed to prevent a miscarriage of justice where the judicial process has been exhausted. [citation]. We believe that this is the purpose for which the framers gave the Governor this power in the Illinois Constitution. The grant of this essentially unreviewable power carries with it the responsibility to exercise it in the manner intended. Our hope is that Governors will use the clemency power in its intended manner—to prevent miscarriages of justice in individual cases.[29]

SECTION 13. GOVERNOR—LEGISLATIVE MESSAGES

> **The Governor, at the beginning of each annual session of the General Assembly and at the close of his term of office, shall report to the General Assembly on the condition of the State and recommend such measures as he deems desirable.**

This requirement of a "state of the state" message is a companion to the requirement for a budget message in Article 8, section 2. It parallels the President's annual "State of the Union" address.

SECTION 14. LIEUTENANT GOVERNOR—DUTIES

> **The Lieutenant Governor shall perform the duties and exercise the powers in the Executive Branch that may be delegated to him by the Governor and that may be prescribed by law.**

The Lieutenant Governor was president of the Senate under the 1870 Constitution, but now has only duties assigned by the Governor or by law. Statutes give duties to the Lieutenant Governor that include chairing or sitting on several state boards, commissions, and other bodies.[30]

SECTION 15. ATTORNEY GENERAL—DUTIES

> **The Attorney General shall be the legal officer of the State, and shall have the duties and powers that may be prescribed by law.**

The Illinois Supreme Court, at least as early as 1915, interpreted a similar provision in the 1870 Constitution to mean that the Attorney General had not only the powers and duties given by statute but also those historically held by the English attorney-general under common law.[31] These included the exclusive power to represent the government in litigation in which it was the real party in interest, so the court concluded that only the Attorney General could do that in Illinois. The General Assembly could give the Attorney General additional powers and duties, but could not take away any common-law powers of the office.[32]

The 1970 constitutional convention made no substantive change in describing the Attorney General's powers, and the Illinois Supreme Court has continued to interpret them expansively. It has held invalid a part of the Illinois Governmental Ethics Act allowing the

Secretary of State to issue advisory opinions interpreting the Act, on the ground that this infringed the opinion-issuing duties of the Attorney General;[33] held that the Illinois Environmental Protection Agency could not prosecute cases before the Illinois Pollution Control Board because that infringed the power of the Attorney General to represent the state;[34] and (by vote of only 4-3) denied the right of anyone but the Attorney General to sue for an accounting and turning over to the state of funds alleged to have been bribes to legislators.[35] The Illinois Supreme Court has held that state agencies ordinarily may not appoint other counsel to represent them in court without the Attorney General's approval.[36] However, an Illinois Appellate Court decision allowed an agency to appoint its own counsel to prosecute an appeal where the Attorney General was not interested in appealing the decision but had no objection to the agency's doing so.[37] The Illinois Supreme Court has held that under this section and some statutes, an Assistant Attorney General may appear before a local grand jury and carry out an entire criminal prosecution if the state's attorney for that county does not object.[38]

The Illinois Supreme Court also held that the Attorney General can sue on behalf of the people of the state for alleged fraud committed against the Metropolitan Fair and Exposition Authority.[39] The court in 2002 held invalid a statutory provision authorizing private citizens to sue persons alleged to have defrauded the state if public officials refuse to sue them, saying that only the Attorney General has authority to do that.[40]

The Attorney General has been allowed to withdraw from representing one state agency in a proceeding and begin representing another state agency that opposed it, where he had not yet taken any active steps in representing the first agency and thus had no conflict-of-interest problem.[41] The Attorney General has even been allowed to represent state agencies that were formally on opposite sides of a lawsuit, where the court believed that there was no actual conflict of interest in the representation.[42]

The law establishing statutory duties of the office provides for the Attorney General to issue legal opinions to the Governor and other state officers on request.[43] Official Attorney General's opinions are often relied on by officials and may be persuasive to courts, but are not binding on courts.[44] The Attorney General does not ordinarily furnish official opinions to individual legislators except legislative officers, committee chairmen, and minority spokesmen who have legal questions related to their duties. But when possible, the Attorney General's office provides informal advice to legislators on state legal issues.

SECTION 16. SECRETARY OF STATE—DUTIES

The Secretary of State shall maintain the official records of the acts of the General Assembly and such official records of the Executive Branch as provided by law. Such official records shall be available for inspection by the public. He shall keep the Great Seal of the State of Illinois and perform other duties that may be prescribed by law.

The Secretary of State has an extremely wide range of duties, mostly given by statute.[45]

SECTION 17. COMPTROLLER—DUTIES

The Comptroller, in accordance with law, shall maintain the State's central fiscal accounts, and order payments into and out of the funds held by the Treasurer.

The Comptroller replaced the office of Auditor of Public Accounts that existed under the 1870 Constitution. The Comptroller's major function is to "pre-audit" claims for payments out of state funds, allowing only those that are permitted by law. Several statutes govern the Comptroller's actions.[46]

SECTION 18. TREASURER—DUTIES

The Treasurer, in accordance with law, shall be responsible for the safekeeping and investment of monies and securities deposited with him, and for their disbursement upon order of the Comptroller.

The Treasurer controls the state's bank accounts and securities, making payments from them with approval from the Comptroller. The Illinois Supreme Court held under the 1870 Constitution that the Treasurer had substantial discretion to decide how to invest state funds, within any restrictions imposed by statutes.[47] This section does not appear to change that holding. However, statutes set some restrictions on the deposit of state funds with financial institutions.[48]

SECTION 19. RECORDS—REPORTS

All officers of the Executive Branch shall keep accounts and shall make such reports as may be required by law. They shall provide the Governor with information relating to their respective offices, either in writing under oath, or otherwise, as the Governor may require.

The second sentence is a weakened carryover from a provision in the 1870 Constitution, and appears to have little practical effect. But it supports the principle that the Governor is the state's chief executive officer, responsible for the execution of all state laws.

SECTION 20. BOND

Civil officers of the Executive Branch may be required by law to give reasonable bond or other security for the faithful performance of their duties. If any officer is in default of such a requirement, his office shall be deemed vacant.

The amounts for which statutes require executive officers to be bonded range from $10,000 for the Attorney General,[49] who does not have much direct opportunity to control disposition of state money, to $1 million for the Comptroller,[50] who does. Apparently no bond is required of the Governor. Sections of the Official Bond Act provide for required bonding of state officers, employees, and other personnel to be supplied by a blanket bond or a self-insurance program, in either case by the Department of Central Management Services.[51]

SECTION 21. COMPENSATION

Officers of the Executive Branch shall be paid salaries established by law and shall receive no other compensation for their services. Changes in the salaries of these officers elected or appointed for stated terms shall not take effect during the stated terms.

Based on court decisions holding that provisions such as this one merely require that the method of determining salary be fixed before an officer's term—not that the actual amount of salary be fixed—the Attorney General in 1978 advised that a law enacted before the beginning of an officer's term could validly provide periodic pay increases during that term based on an objective index of inflation rates.[52]

In 1985 the Illinois Supreme Court upheld the Compensation Review Act under which salaries for legislators, major executive officers, and judges are recommended by the Compensation Review Board and, if the General Assembly does not disapprove, thereafter take effect. The court said this was sufficient compliance with the constitutional requirement that salaries be "established by law."[53]

The Illinois Supreme Court has held that changes in state's attorneys' salaries are not restricted by this section, since state's attorneys are not officers of the executive branch of state government but rather are provided for in Article 6, sec. 19.[54]

Article 6. The Judiciary

The 1870 Constitution's judicial article was superseded by a new judicial article approved by the voters in 1962, effective in January 1964. It replaced the several kinds of courts that had existed with a simpler system having only three kinds of courts: circuit (trial), appellate, and supreme. The 1970 Constitution essentially kept that court system but made some changes, especially in the powers of the Illinois Supreme Court and the structure of the judicial disciplinary system.

SECTION 1. COURTS

The judicial power is vested in a Supreme Court, an Appellate Court and Circuit Courts.

These are the only Illinois courts provided by the Constitution. The present circuit courts superseded various trial courts of limited jurisdiction, such as county courts, municipal courts, and probate courts, that existed before the 1962 Judicial Article took effect in 1964. However, the present circuit courts have some administrative divisions, such as small claims court in every circuit[1] and specialized divisions in populous circuits.

The Court of Claims, which hears suits against the state, is not a court in the constitutional sense but a sort of combined legislative-administrative agency to hear claims and recommend payment to the General Assembly.[2]

Scope of judicial powers

The Illinois courts jealously resist perceived legislative encroachment on their powers. Some examples follow:[3] In 1977 the Supreme Court struck down a law providing that the prosecution and defense in criminal trials could each question prospective jurors, calling this an unconstitutional legislative interference with judicial procedures.[4] In 1983 the court struck down a law providing for a special panel of three circuit judges to hear election contests, saying it was a legislative attempt to alter the basic character of the court system.[5] In 1991 the court struck down a law setting conditions under which a convicted person could be allowed to go free on bail during an appeal,[6] on the ground that a Supreme Court rule providing for appeals did not set such conditions.[7] In 1995 the court held that application of the Illinois Public Labor Relations Act to court reporters would violate the Supreme Court's administrative powers over Illinois courts.[8] Illinois Appellate Court cases have held that the General Assembly may not allow prosecutors to appeal trial judges' bail decisions, because that infringes a rule of the Illinois Supreme Court regulating grounds for appealing such nonfinal decisions in criminal cases.[9]

The Illinois Supreme Court in two 1992 cases upheld a law requiring each plaintiff in a medical malpractice suit to attach to the complaint an affidavit that a health professional had found reasonable cause for suing, and to attach the health professional's report indicating the basis for that determination.[10] A bare majority of four justices reasoned that this requirement largely duplicated existing requirements (1) that the plaintiff or plaintiff's attorney certify by signing the complaint that there is a valid basis for suing, and (2) in most cases, that a health professional testify at the trial. The majority said this law did not give judicial powers to a nonjudicial person (the health professional) because that person was expressing only a medical opinion, not an ultimate legal opinion.[11] One of the four justices in the majority construed the law as *allowing* but not *requiring* the trial court to dismiss a complaint not accompanied by these documents.[12]

SECTION 2. JUDICIAL DISTRICTS

The State is divided into five Judicial Districts for the selection of Supreme and Appellate Court Judges. The First Judicial District consists of Cook County. The remainder of the State shall be divided by law into four Judicial Districts of substantially equal population, each of which shall be compact and composed of contiguous counties.

The current lines of Illinois court districts were drawn by a 1963 act.[13]

The Illinois Supreme Court has held that the First Judicial District is legally distinct from the County of Cook although they are coextensive in area.[14] That decision arose under a part of the Election Code that requires persons forming a "new political party" in a district or political subdivision to file "a complete list of candidates of such party for all offices to be filed in . . . such district or political subdivision . . . ."[15] The court said this provision did not require persons establishing a new political party in Cook County to propose an entire slate of judicial candidates there.

The Illinois Supreme Court held unconstitutional a 1989 law subdividing the First Judicial District (coterminous with Cook County) into three subdistricts.[16] This holding is discussed under section 5 below. A 1997 act redrawing district lines was also struck down, because it divided Cook County into three districts and split some judicial circuits between judicial districts.[17]

SECTION 3. SUPREME COURT—ORGANIZATION

The Supreme Court shall consist of seven Judges. Three shall be selected from the First Judicial District and one from each of the other Judicial Districts. Four Judges constitute a quorum and the concurrence of four is necessary for a decision. Supreme Court Judges shall select a Chief Justice from their number to serve for a term of three years.

The constitutional requirement that election districts be apportioned so that each person's vote has equal weight ("one person, one vote") does not apply to judicial elections.[18] However, section 2 and this section give an approximation of equal weight to voters in Cook County (the First Judicial District) and the other four districts, while providing for an odd number of judges on the Illinois Supreme Court to reduce the possibility of tied decisions.

SECTION 4. SUPREME COURT—JURISDICTION

(a) The Supreme Court may exercise original jurisdiction in cases relating to revenue, mandamus, prohibition or habeas corpus and as may be necessary to the complete determination of any case on review.

The court exercises original jurisdiction when a litigant is allowed to go directly to it without starting in a lower court. The four categories of original jurisdiction are discretionary with the Illinois Supreme Court, which may refuse to hear such cases originally. Or litigants may choose to file those cases in lower courts. In addition to the jurisdiction given here, the Illinois Supreme Court has expansively construed its administrative power over Illinois courts (see section 16) to allow it to issue orders to individual courts telling them how to dispose of specific cases, even though those lower courts' orders were not formally appealable. These cases are described under section 16.

(b) Appeals from judgments of Circuit Courts imposing a sentence of death shall be directly to the Supreme Court as a matter of right. The Supreme Court shall provide by rule for direct appeal in other cases.

The other kinds of criminal cases in which an Illinois Supreme Court rule allows direct appeal from circuit courts are those in which a federal or Illinois law has been held invalid by a circuit court.[19] In civil cases, the rules allow direct appeal to the Illinois Supreme Court if a federal or Illinois law has been held invalid, and direct appeals from rulings ordering compliance with circuit courts' administrative orders.[20]

(c) Appeals from the Appellate Court to the Supreme Court are a matter of right if a question under the Constitution of the United States or of this State arises for the first time in and as a result of the action of the Appellate Court, or if a division of the Appellate Court certifies that a case decided by it involves a question of such importance that the case should be decided by the Supreme Court. The Supreme Court may provide by rule for appeals from the Appellate Court in other cases.

Appeals to the Illinois Supreme Court in other cases are subject to the discretion of that court; it has not established exact rules determining what kinds of cases it will hear beyond those set forth here.[21]

SECTION 5. APPELLATE COURT—ORGANIZATION

The number of Appellate Judges to be selected from each Judicial District shall be provided by law. The Supreme Court shall prescribe by rule the number of Appellate divisions in each Judicial District. Each Appellate division shall have at least three Judges. Assignments to divisions shall be made by the Supreme Court. A majority of a division constitutes a quorum and the concurrence of a majority of the division is necessary for a decision. There shall be at least one division in each Judicial District and each division shall sit at times and places prescribed by rules of the Supreme Court.

The Illinois Supreme Court held unconstitutional a 1989 law subdividing the First Judicial District (coextensive with Cook County) into three subdistricts. The court noted a distinction between this article's subsection 7(a), which says the General Assembly may divide a *circuit* for selection of circuit judges, and section 5, which does not mention statutory division of an appellate *district*. The court also quoted statements from delegates at the 1970 constitutional convention indicating that, to avoid possible problems with the constitutional requirement of "one person, one vote," Appellate Court judges should be elected at large from each appellate district.[22]

A division of the Illinois Appellate Court ordinarily consists of a panel of three judges. Illinois court decisions have held that substantive motions in the Appellate Court must be heard before three judges,[23] and at least two of them must be in office and concur when they file a decision to make it valid.[24]

One Appellate Court

Although there are five Illinois Appellate Court districts, legally there is only one Illinois Appellate Court.[25] Illinois courts have held that a decision by one district of the Appellate Court establishes a precedent that is binding on circuit courts in that circuit, and on all other circuit courts in the state unless another Appellate Court decision conflicts with it; but that such a decision is *not* binding on Appellate Court panels in other judicial districts.[26] Different districts of the Appellate Court sometimes disagree on a legal issue, in which event the Illinois Supreme Court usually hears appeals from their decisions and resolves the issue.

SECTION 6. APPELLATE COURT—JURISDICTION

Appeals from final judgments of a Circuit Court are a matter of right to the Appellate Court in the Judicial District in which the Circuit Court is located except in cases appealable directly to the Supreme Court and except that after a trial on the merits in a criminal case, there shall be no appeal from a judgment of acquittal. The Supreme Court may provide by rule for appeals to the Appellate Court from other than final judgments of Circuit Courts. The Appellate Court may exercise original jurisdiction when necessary to the complete determination of any case on review. The Appellate Court shall have such powers of direct review of administrative action as provided by law.

A party losing in a circuit court is guaranteed at least one appeal—either to an Appellate Court panel in that judicial district, or in some cases directly to the Illinois Supreme Court. The only exception is that if a criminal defendant is acquitted at trial, no appeal by the state is allowed, consistent with the prohibitions on double jeopardy in the U.S. and Illinois Constitutions.

The Illinois Supreme Court has held that since this section allows appeals as a matter of right from final judgments of circuit courts, appellants (parties appealing) cannot be required to post a bond, nor may other substantive conditions be imposed that restrict the right of appeal.[27] The Illinois Supreme Court also held that because this section's second sentence authorizes it to issue rules for appealing decisions by circuit courts that are not final judgments, a statute authorizing such appeals in some cases was unconstitutional.[28]

Although the last sentence of this section allows for Illinois Appellate Court review of agency decisions, the Administrative Review Law (within the Code of Civil Procedure) still provides for such review by circuit courts in most kinds of cases.[29] But statutes do allow review of some major kinds of administrative actions in the Appellate Court. These include decisions by the State Board of Elections;[30] Educational Labor Relations Board;[31] Local Labor Relations Board;[32] Human Rights Commission;[33] Pollution Control Board;[34] and Illinois Commerce Commission.[35]

SECTION 7. JUDICIAL CIRCUITS

(a) The State shall be divided into Judicial Circuits consisting of one or more counties. The First Judicial District shall constitute a Judicial Circuit. The Judicial Circuits within the other Judicial Districts shall be as provided by law. Circuits composed of more than one county shall be compact and of contiguous counties. The General Assembly by law may provide for the division of a circuit for the purpose of selection of Circuit Judges and for the selection of Circuit Judges from the circuit at large.

The Illinois Supreme Court, citing this subsection along with other support, struck down provisions that allowed judges to be elected by the voters of an entire judicial circuit while requiring some of those judges to reside in a particular county within that circuit.[36] That case is discussed under section 11 below.

(b) Each Judicial Circuit shall have one Circuit Court with such number of Circuit Judges as provided by law. Unless otherwise provided by law, there shall be at least one Circuit Judge from each county. In the First Judicial District, unless otherwise provided by law, Cook County, Chicago, and the area outside Chicago shall be separate units for the selection of Circuit Judges, with at least twelve chosen at large from the area outside Chicago and at least thirty-six chosen at large from Chicago.

These provisions resulted from the particular arrangement of judges and courts that was left in Cook County when the 1962 Judicial Article took effect. That Article and the 1970 Constitution largely adopted the existing system for electing judges from various localities, but these provisions could be changed by law if other arrangements appear more desirable.

(c) Circuit Judges in each circuit shall select by secret ballot a Chief Judge from their number to serve at their pleasure. Subject to the authority of the Supreme Court, the Chief Judge shall have general administrative authority over his court, including authority to provide for divisions, general or specialized, and for appropriate times and places of holding court.

Under an Illinois Supreme Court rule, a majority of the judges in a circuit can adopt rules governing civil and criminal cases that are consistent with state law and Illinois Supreme Court rules. Such rules must then be filed with the state court administrator. The chief judge of the circuit can also issue general orders providing for assignment of judges.[37]

SECTION 8. ASSOCIATE JUDGES

Each Circuit Court shall have such number of Associate Judges as provided by law. Associate Judges shall be appointed by the Circuit Judges in each circuit as the Supreme Court shall provide by rule. In the First Judicial District, unless otherwise provided by law, at least one-fourth of the Associate Judges shall be appointed from, and reside, outside Chicago. The Supreme Court shall provide by rule for matters to be assigned to Associate Judges.

This section created the new office of associate judge, similar to the old office of magistrate, to be appointed by the circuit judges in each circuit. An Illinois Supreme Court rule normally allows associate judges to be assigned to try any case except those for which a defendant could be imprisoned over 1 year (felonies). But the rule also allows the chief judge of a circuit, if authorized by the Illinois Supreme Court based on a showing of need, to make temporary assignments of associate judges to hear felony cases.[38]

SECTION 9. CIRCUIT COURTS—JURISDICTION

Circuit Courts shall have original jurisdiction of all justiciable matters except when the Supreme Court has original and exclusive jurisdiction relating to redistricting of the General Assembly and to the ability of the Governor to serve or resume office. Circuit Courts shall have such power to review administrative action as provided by law.

All trial-level judicial functions have been consolidated in the circuit courts. They may hear the trial of any case to which the state judicial power extends, except the two kinds of cases listed in this section over which the Illinois Supreme Court has exclusive jurisdiction. The Illinois Supreme Court has invalidated laws that attempted to require arbitration of some automobile accident claims as a prerequisite to suing in court,[39] or to require binding arbitration of medical malpractice claims,[40] both on the ground that they infringed the judicial powers of circuit courts.

On the other hand, Illinois courts have held that persons challenging administrative agency actions must comply with any law requiring them to exhaust administrative remedies before going to court,[41] and have held that if the right to proceed in court with a particular kind of suit was created by statute, rather than being an inherent part of the judicial power, the requirements of the statute governing such suits must be followed.[42] For example, most complaints under the Environmental Protection Act must be filed with the Pollution Control Board as provided in that Act—although the courts have held that suits for injunctions to prevent future pollution, or to recover cleanup costs, can be brought in circuit courts.[43]

The Illinois Educational Labor Relations Act divests the circuit courts of jurisdiction to vacate or enforce arbitration awards in public school labor disputes[44] or to enjoin such arbitration.[45]

Illinois Appellate Court decisions have held that the divisions of the circuit court in a populous county such as Cook are only for administrative convenience; assignment of a case

to one division does not prevent the judge hearing the case from dealing with subjects normally handled by other divisions.[46]

SECTION 10. TERMS OF OFFICE

The terms of office of Supreme and Appellate Court Judges shall be ten years; of Circuit Judges, six years; and of Associate Judges, four years.

Under subsection 12(d), judicial terms begin on the first Monday of December.

SECTION 11. ELIGIBILITY FOR OFFICE

No person shall be eligible to be a Judge or Associate Judge unless he is a United States citizen, a licensed attorney-at-law of this State, and a resident of the unit which selects him. No change in the boundaries of a unit shall affect the tenure in office of a Judge or Associate Judge incumbent at the time of such change.

The statement in the Constitution of qualifications for being a judge prevents a statute from adding further ones.[47] Citing that principle in part, the Illinois Supreme Court in 1988 struck down provisions allowing circuit judges in some circuits to be elected by voters of the entire circuit while requiring them to be residents of particular counties within the circuit.[48] The court also cited an exchange on the floor of the 1970 constitutional convention, which it said showed an intent by delegates that judicial candidates not be required to reside in particular parts of a circuit.[49]

SECTION 12. ELECTION AND RETENTION

(a) Supreme, Appellate and Circuit Judges shall be nominated at primary elections or by petition. Judges shall be elected at general or judicial elections as the General Assembly shall provide by law. A person eligible for the office of Judge may cause his name to appear on the ballot as a candidate for Judge at the primary and at the general or judicial elections by submitting petitions. The General Assembly shall prescribe by law the requirements for petitions.

An Illinois Appellate Court panel in 1992 held that this subsection does not prevent political parties from filling vacancies in judicial nominations that result from lack of candidates running in the primary.[50] But the Illinois Supreme Court reversed on a statutory ground, and its opinion cast serious doubt on the correctness of the Appellate Court panel's constitutional holding.[51] Provisions in the Election Code authorize vacancies in nominations to be filled by party committees.[52]

(b) The office of a Judge shall be vacant upon his death, resignation, retirement, removal, or upon the conclusion of his term without retention in office. Whenever an additional Appellate or Circuit Judge is authorized by law, the office shall be filled in the manner provided for filling a vacancy in that office.

(c) A vacancy occurring in the office of Supreme, Appellate or Circuit Judge shall be filled as the General Assembly may provide by law. In the absence of a law, vacancies may be filled by appointment by the Supreme Court. A person appointed to fill a vacancy 60 or more days prior to the next primary election to nominate Judges shall serve until the vacancy is filled for a term at the next general or judicial election.

A person appointed to fill a vacancy less than 60 days prior to the next primary election to nominate Judges shall serve until the vacancy is filled at the second general or judicial election following such appointment.

(d) Not less than six months before the general election preceding the expiration of his term of office, a Supreme, Appellate or Circuit Judge who has been elected to that office may file in the office of the Secretary of State a declaration of candidacy to succeed himself. The Secretary of State, not less than 63 days before the election, shall certify the Judge's candidacy to the proper election officials. The names of Judges seeking retention shall be submitted to the electors, separately and without party designation, on the sole question whether each Judge shall be retained in office for another term. The retention elections shall be conducted at general elections in the appropriate Judicial District, for Supreme and Appellate Judges, and in the circuit for Circuit Judges. The affirmative vote of three-fifths of the electors voting on the question shall elect the Judge to the office for a term commencing on the first Monday in December following his election.

(e) A law reducing the number of Appellate or Circuit Judges shall be without prejudice to the right of the Judges affected to seek retention in office. A reduction shall become effective when a vacancy occurs in the affected unit.

The present Illinois judicial selection system is a hybrid between partisan election of judges and the so-called "Missouri plan" of appointment followed by uncontested retention elections. Judicial candidates usually run under party labels but are nominated at primary elections. A judge who has once been elected need not run against another candidate for re-election, but instead runs for retention unopposed, the question being only whether the judge is to be retained in office. The 1970 Constitution changed the portion of persons voting who are needed to retain a judge from a simple majority to three-fifths; a challenge in federal court to that increase failed.[53] Some 18 circuit judges were denied retention in the 5 general elections from 1984 to 1994—although many of those denials occurred in 1990, in the wake of the federal Operation Greylord investigation into judicial corruption in Cook County.

Subsection 12(c) provides that vacancies occurring during the terms of judges are to be filled as provided by law (at present there is none); or if not, by appointment by the Illinois Supreme Court. Appointed judges are not eligible under subsection 12(d) to run unopposed for retention, but may circulate petitions and run in contested elections like other candidates.

SECTION 13. PROHIBITED ACTIVITIES

(a) The Supreme Court shall adopt rules of conduct for Judges and Associate Judges.

(b) Judges and Associate Judges shall devote full time to judicial duties. They shall not practice law, hold a position of profit, [or] hold office under the United States or this State or unit of local government or school district or in a political party. Service in the State militia or armed forces of the United States for periods of time permitted by rule of the Supreme Court shall not disqualify a person from serving as a Judge or Associate Judge.

The Illinois Supreme Court has issued standards of judicial conduct that include, among other things, limitations on business activities and compensation for nonjudicial service; disqualifications due to conflicts of interest; and some limited disclosures of economic interests.[54]

SECTION 14. JUDICIAL SALARIES AND EXPENSES—FEE OFFICERS ELIMINATED

Judges shall receive salaries provided by law which shall not be diminished to take effect during their terms of office. All salaries and such expenses as may be provided by law shall be paid by the State, except that Appellate, Circuit and Associate Judges shall receive such additional compensation from counties within their district or circuit as may be provided by law. There shall be no fee officers in the judicial system.

In 1985 the Illinois Supreme Court upheld the Compensation Review Act, under which salaries of legislators, major executive officers, and judges are recommended by the Compensation Review Board and, unless the General Assembly disapproves, take effect without further action. The court said this was sufficient compliance with the requirement that judicial salaries be "provided by law."[55]

The Illinois Supreme Court has confirmed the apparent intent expressed in this section that the General Assembly by law may require counties to provide the additional compensation for their judges.[56]

The last sentence, prohibiting fee officers in the judicial system, abolished the offices of masters in chancery and other minor judicial officers formerly paid by fees for their work.[57] Illinois courts have held that this provision invalidated a law requiring arbitration of some automobile accident claims because, in addition to infringing on the jurisdiction of circuit courts, it required arbitrators who would need fees;[58] and that a court could not appoint a commissioner to sell some land because he would be a fee officer.[59] But another decision held that commissioners could be appointed to determine whether real property held in joint ownership was susceptible of division, since these would be merely "lesser administrative assistants" rather than officers.[60]

SECTION 15. RETIREMENT—DISCIPLINE

(a) The General Assembly may provide by law for the retirement of Judges and Associate Judges at a prescribed age. Any retired Judge or Associate Judge, with his or her consent, may be assigned by the Supreme Court to judicial service for which he or she shall receive the applicable compensation in lieu of retirement benefits. A retired Associate Judge may be assigned only as an Associate Judge.

A law requiring retirement of judges at age 70 was upheld by federal courts in 1979.[61] But statutory amendments since then have extended the date of mandatory retirement until the end of the term in which a judge turns 75.[62] A majority of an Illinois Appellate Court panel in a 1992 case held that the law setting a compulsory *retirement* age for judges does not prevent an otherwise qualified person from *running* for election as judge even after age 75. The majority pointed out that the law on compulsory retirement of judges says only that a judge is automatically *retired* at the end of the term after turning 75; it does not say a person cannot *run* for a judgeship after that age. The dissenting Appellate Court judge argued that this was an "absurd result" which courts should presume the legislature did not intend.[63]

This section was rewritten by a constitutional amendment approved by the voters in 1998 that was intended to strengthen the judicial disciplinary process.[64] The commentary after each subsection summarizes the changes made to it by the 1998 constitutional amendment.

(b) A Judicial Inquiry Board is created. The Supreme Court shall select two Circuit Judges as members and the Governor shall appoint four persons who are not lawyers and three lawyers as members of the Board. No more than two of the lawyers and two of the non-lawyers appointed by the Governor shall be members of the same political party. The terms of Board members shall be four years. A vacancy on the Board shall

be filled for a full term in the manner the original appointment was made. No member may serve on the Board more than eight years.

(c) The Board shall be convened permanently, with authority to conduct investigations, receive or initiate complaints concerning a Judge or Associate Judge, and file complaints with the Courts Commission. The Board shall not file a complaint unless five members believe that a reasonable basis exists (1) to charge the Judge or Associate Judge with willful misconduct in office, persistent failure to perform his duties, or other conduct that is prejudicial to the administration of justice or that brings the judicial office into disrepute, or (2) to charge that the Judge or Associate Judge is physically or mentally unable to perform his duties. All proceedings of the Board shall be confidential except the filing of a complaint with the Courts Commission. The Board shall prosecute the complaint.

In a case arising in the 1980s after a lawyer had filed a complaint with the Judicial Inquiry Board (and allegedly complained orally to other persons) about a judge's actions, and the judge sued the lawyer for defamation, the Illinois Supreme Court held that the judge could not require the lawyer to disclose the nature of what he had communicated to the Board. To force such disclosure would have violated the requirement in this subsection that "[a]ll proceedings of the Board shall be confidential except the filing of a complaint with the Courts Commission."[65]

An Illinois Appellate Court decision held that the Judicial Inquiry Board could not compel the Chicago Bar Association to disclose to the Board the nature or sources of information the bar association had on violations by associate judges of standards of judicial conduct. The bar association was given information about judges in confidence by lawyers and others, and used it to advise the Cook County circuit court on whether to re-appoint associate judges. The Appellate Court held that the interest of the bar association and people who give it information in confidence outweighs the interest of the Judicial Inquiry Board in obtaining the information, because without an assurance of confidentiality few people would be willing to volunteer damaging information about sitting judges.[66]

(d) The Board shall adopt rules governing its procedures. It shall have subpoena power and authority to appoint and direct its staff. Members of the Board who are not Judges shall receive per diem compensation and necessary expenses; members who are Judges shall receive necessary expenses only. The General Assembly by law shall appropriate funds for the operation of the Board.

(e) An independent Courts Commission is created consisting of one Supreme Court Judge selected by that Court as a member and one as an alternate, two Appellate Court Judges selected by that Court as members and three as alternates, two Circuit Judges selected by the Supreme Court as members and three as alternates, and two citizens selected by the Governor as members and two as alternates. Members and alternates who are Appellate Court Judges must each be from a different Judicial District. Members and alternates who are Circuit Judges must each be from a different Judicial District.

Members and alternates of the Commission shall not be members of the Judicial Inquiry Board. The members of the Commission shall select a chairperson to serve a two-year term.

The Commission shall be convened permanently to hear complaints filed by the Judicial Inquiry Board. The Commission shall have authority after notice and public hearing, (1) to remove from office, suspend without pay, censure or reprimand a Judge or Associate Judge for willful misconduct in office, persistent failure to perform his or her duties, or other conduct that is prejudicial to the administration of justice or that brings the judicial office into disrepute, or (2) to suspend, with or without pay, or retire a Judge or Associate Judge who is physically or mentally unable to perform his or her duties.

The 1998 constitutional amendment changed this subsection by describing the Courts Commission as an "independent" body; expanding its membership from five to seven by adding two members of the general public appointed by the Governor, and providing for alternate members; prohibiting Commission members and alternates from also sitting on the Judicial Inquiry Board; and allowing the Board to select its own chairperson. The amendment also required that members and alternates who are Appellate Court judges each be from a different judicial district, and similarly for circuit judges.

(f) The concurrence of four members of the Commission shall be necessary for a decision. The decision of the Commission shall be final.

With the expansion of the Commission from five to seven regular members in 1998, the majority needed to make a decision was increased from three to four.

(g) The Commission shall adopt comprehensive rules to ensure that its procedures are fair and appropriate. These rules and any amendments shall be public and filed with the Secretary of State at least 30 days before becoming effective.

The 1998 amendment added that the Commission's rules should ensure fair procedures, and required them to be public and be filed with the Secretary of State.

(h) A member of the Commission shall disqualify himself or herself, or the other members of the Commission shall disqualify a member, with respect to any proceeding in which disqualification or recusal would be required of a Judge under rules of the Supreme Court, under rules of the Commission, or by law.

If a Supreme Court Judge is the subject of a proceeding, then there shall be no Supreme Court Judge sitting as a member of the Commission with respect to that proceeding. Instead, an alternate Appellate Court Judge not from the same Judicial District as the subject Supreme Court Judge shall replace the subject Supreme Court Judge. If a member who is an Appellate Court Judge is the subject of a proceeding, then an alternate Appellate Court Judge shall replace the subject Appellate Court Judge. If an Appellate Court Judge who is not a member is the subject of a proceeding and an Appellate Court Judge from the same Judicial District is a member, then an alternate Appellate Court Judge shall replace that member.

If a member who is a Circuit Judge is the subject of a proceeding, then an alternate Circuit Judge shall replace the subject Circuit Judge. If a Circuit Judge who is not a member is the subject of a proceeding and a Circuit Judge from the same Judicial District is a member, then an alternate Circuit Judge shall replace that member.

If a member of the Commission is disqualified under this Section with respect to any proceeding, that member shall be replaced by an alternate on a rotating basis in a manner provided by rule of the Commission. The alternate shall act as member of the Commission with respect to that proceeding only.

(i) The Commission shall have power to issue subpoenas.

(j) Members and alternates of the Commission who are not Judges shall receive per diem compensation and necessary expenses; members and alternates who are Judges shall receive necessary expenses only. The General Assembly shall provide by law for the expenses and compensation of the Commission.

Almost all of subsections (h) through (j) was added by the 1998 constitutional amendment.

The Illinois Constitution prescribes a two-step process for judicial discipline. The Judicial Inquiry Board composed of non-lawyers, lawyers, and judges acts like a prosecutor

to investigate charges against judges and bring those it deems meritorious to the Courts Commission. The Commission, composed only of judges, has power to impose punishments up to and including removal from office for judicial misconduct. Subsection 15(f) says: "The decision of the Commission shall be final." Despite that statement, in a 1977 case in which the Courts Commission had imposed discipline on a trial judge for issuing to criminal defendants a number of orders that the Commission believed were without legal authority, the Illinois Supreme Court ordered the Commission to expunge its order and asserted that the Commission had no authority to determine the legality of the judge's orders. The court also said that the standards set forth in subsection 15(c) "were intended to serve only as a guide to the Board in determining whether an alleged violation of [the Illinois Supreme Court's] rules warranted the filing of a formal complaint,"[67] and that a judge's actions are not subject to discipline unless they violate one of the Supreme Court's own rules of judicial conduct.

On the other hand, when the Courts Commission in 1981 refused to impose discipline on a judge for admitted violations of an Illinois Supreme Court rule, the Illinois Supreme Court upheld that decision, saying that the Commission had authority to interpret the rules and decide which violations of them were serious.[68]

In a 1978 case involving confidentiality of the judicial disciplinary process, the Illinois Supreme Court decided, without a majority opinion, that a judge under investigation by the Judicial Inquiry Board could not require the Board to disclose to him all the information in its file on him, but only information plainly negating his guilt.[69]

The 1998 constitutional amendment was proposed after unsuccessful impeachment proceedings against a sitting Illinois Supreme Court judge, which brought to public attention the possibility of conflicts of interest in the judicial disciplinary process.

SECTION 16. ADMINISTRATION

> **General administrative and supervisory authority over all courts is vested in the Supreme Court and shall be exercised by the Chief Justice in accordance with its rules. The Supreme Court shall appoint an administrative director and staff, who shall serve at its pleasure, to assist the Chief Justice in his duties. The Supreme Court may assign a Judge temporarily to any court and an Associate Judge to serve temporarily as an Associate Judge on any Circuit Court. The Supreme Court shall provide by rule for expeditious and inexpensive appeals.**

The Illinois Supreme Court has construed this section as empowering it to issue orders to lower courts controlling their disposition of specific cases that were being heard, or had been heard, before those courts, even though the lower courts' decisions were not appealable.[70] The Illinois Supreme Court has also said that a statute that conflicts with an Illinois Supreme Court rule governing procedure or administration of courts is invalid.[71] And the Illinois Supreme Court has construed its rulemaking authority as allowing it by rule to create a new kind of action in circuit courts (a suit to discover the identities of possible defendants without first filing a substantive suit against any of them).[72]

SECTION 17. JUDICIAL CONFERENCE

> **The Supreme Court shall provide by rule for an annual judicial conference to consider the work of the courts and to suggest improvements in the administration of justice and shall report thereon annually in writing to the General Assembly not later than January 31.**

In addition to providing for the annual judicial conference of all judges, Illinois Supreme Court rules provide for an executive committee of the judicial conference,[73] and for a conference of chief circuit judges.[74]

SECTION 18. CLERKS OF COURTS

(a) The Supreme Court and the Appellate Court Judges of each Judicial District, respectively, shall appoint a clerk and other non-judicial officers for their Court or District.

(b) The General Assembly shall provide by law for the election, or for the appointment by Circuit Judges, of clerks and other non-judicial officers of the Circuit Courts and for their terms of office and removal for cause.

(c) The salaries of clerks and other non-judicial officers shall be as provided by law.

Circuit clerks are elected in Illinois.[75] The Illinois Supreme Court has held that clerks of circuit courts are nonjudicial members of the judicial branch of state government—not county officers—even though county boards are required to set and pay their salaries.[76] The Illinois Supreme Court also rejected a trial judge's order raising the salaries of a county probation officer and youth-home superintendent. It said that authority to set such salaries is given by law to the county board and cannot be assumed by courts, except in extreme cases of failure to provide for the needs of the courts.[77]

Finally, the Illinois Supreme Court has prohibited the State Labor Relations Board from considering counties to be joint employers along with the state of other nonjudicial court employees, such as bailiffs, stenographers, and jury commission clerks, for union bargaining purposes. Although counties pay their salaries, the court held that this did not make them joint employers with the state.[78]

SECTION 19. STATE'S ATTORNEYS—SELECTION, SALARY

A State's Attorney shall be elected in each county in 1972 and every fourth year thereafter for a four year term. One State's Attorney may be elected to serve two or more counties if the governing boards of such counties so provide and a majority of the electors of each county voting on the issue approve. A person shall not be eligible for the office of State's Attorney unless he is a United States citizen and a licensed attorney-at-law of this State. His salary shall be provided by law.

The state's attorney in each county is the attorney and legal advisor for the county government, while also representing the interests of the state in criminal prosecutions.[79] Although this section and a statute[80] allow two or more counties to elect a single state's attorney jointly, none have done so.

The Illinois Supreme Court has held that since this section does not prohibit changes in salaries of state's attorneys during their terms in office, their salaries may be increased at any time.[81]

Article 7. Local Government

The Local Government Article contains a major innovation in Illinois government: home rule for many municipalities and at least one county. Home rule was designed to negate "Dillon's Rule,"[1] which said that since municipalities and other units of local government are creatures of the state, they have no powers except those given by state law. That rule, which was followed by courts in Illinois and the U.S. generally, required statutory authorization for every kind of local regulation and taxation. This was believed to hamper Illinois' larger cities and Cook County in dealing with their problems. The 1970 constitutional convention decided to reverse Dillon's Rule as to these units of local government—allowing them to regulate, tax, and otherwise deal with matters of local concern unless specifically prohibited by statute.

This article also guarantees limited powers to non-home-rule municipalities and counties. All other units of local government, and school districts, are still bound by Dillon's Rule.

SECTION 1. MUNICIPALITIES AND UNITS OF LOCAL GOVERNMENT

> **"Municipalities" means cities, villages and incorporated towns. "Units of local government" means counties, municipalities, townships, special districts, and units, designated as units of local government by law, which exercise limited governmental powers or powers in respect to limited governmental subjects, but does not include school districts.**

Due in part to the large number and various kinds of local governments in Illinois, deciding what classification a local government fits into is a recurring problem. This section attempts to simplify the task by defining two terms that are used throughout this article. Illinois courts have held that urban transportation districts, the Chicago Transit Authority, and the Chicago Housing Authority are "units of local government" within the definition here.[2] Several Attorney General's opinions have also advised on whether other local governmental entities are "units of local government" within this definition.[3]

SECTION 2. COUNTY TERRITORY, BOUNDARIES AND SEATS

> **(a) The General Assembly shall provide by law for the formation, consolidation, merger, division, and dissolution of counties, and for the transfer of territory between counties.**
>
> **(b) County boundaries shall not be changed unless approved by referendum in each county affected.**
>
> **(c) County seats shall not be changed unless approved by three-fifths of those voting on the question in a county-wide referendum.**

These provisions were taken with some changes from the 1870 Constitution. No county boundaries have been changed in Illinois in over a hundred years.

SECTION 3. COUNTY BOARDS

> **(a) A county board shall be elected in each county. The number of members of the county board shall be fixed by ordinance in each county within limitations provided by law.**

The Illinois Supreme Court held that the second sentence of this subsection, by giving the county board power to determine its size, prevents county voters from changing the number of members of the county board by referendum.[4] The Transition Schedule's subsection 5(a) provides an exception for counties not under township organization that elect a three-member county board.

> **(b) The General Assembly by law shall provide methods available to all counties for the election of county board members. No county, other than Cook County, may change its method of electing board members except as approved by county-wide referendum.**

For counties under township organization, the Counties Code provides for apportioning county board seats and sets the minimum and maximum number of seats on a county board.[5] The few counties not under township organization, in southern or southwest-central Illinois, each elect three commissioners because the 1870 Constitution so provided, and the Transition Schedule of this Constitution says they are to continue doing so unless the number is changed by referendum.[6]

> **(c) Members of the Cook County Board shall be elected from two districts, Chicago and that part of Cook County outside Chicago, unless (1) a different method of election is approved by a majority of votes cast in each of the two districts in a county-wide referendum or (2) the Cook County Board by ordinance divides the county into single member districts from which members of the County Board resident in each district are elected. If a different method of election is adopted pursuant to option (1) the method of election may thereafter be altered only pursuant to option (2) or by county-wide referendum. A different method of election may be adopted pursuant to option (2) only once and the method of election may thereafter be altered only by county-wide referendum.**

A 1973 federal district court decision held that, due to population shifts, the Cook County board must be reapportioned from its historical combination of 10 Chicago and 5 suburban members to 10 Chicago and 6 suburban members.[7] In 1982 the federal courts raised the required number of suburban members to 7.[8] See also the Transition Schedule's subsection 5(b).

SECTION 4. COUNTY OFFICERS

> **(a) Any county may elect a chief executive officer as provided by law. He shall have those duties and powers provided by law and those provided by county ordinance.**

The County Executive Law within the Counties Code allows any county (other than Cook, which already had a county executive) to decide by referendum to begin electing a county executive.[9] Under that law, the ballot question can propose either to adopt the county executive form of government with county home rule, or to adopt it without home rule.[10]

> **(b) The President of the Cook County Board shall be elected from the County at large and shall be the chief executive officer of the County. If authorized by county ordinance, a person seeking election as President of the Cook County Board may also seek election as a member of the Board.**

> **(c) Each county shall elect a sheriff, county clerk and treasurer and may elect or appoint a coroner, recorder, assessor, auditor and such other officers as provided by law or by county ordinance. Except as changed pursuant to this Section, elected county**

officers shall be elected for terms of four years at general elections as provided by law. Any office may be created or eliminated and the terms of office and manner of selection changed by county-wide referendum. Offices other than sheriff, county clerk and treasurer may be eliminated and the terms of office and manner of selection changed by law. Offices other than sheriff, county clerk, treasurer, coroner, recorder, assessor and auditor may be eliminated and the terms of office and manner of selection changed by county ordinance.

These rather complicated provisions attempt to draw the boundaries between the state's and each county's powers regarding county officers and their duties. Several offices are required unless eliminated by countywide ordinance or by law; others are permissive with the county board. Although subsection 4(c) indicates that the office of county clerk cannot be eliminated by county ordinance, the Illinois Supreme Court has upheld a Cook County ordinance transferring the auditing powers of the county clerk to the newly created office of county comptroller.[11] This change left the clerk of Cook County with substantially the same powers as other county clerks.

The Illinois Supreme Court in 1984 held that the Cook County Board could not, by ordinance, increase the number of members of the county's Board of (tax) Appeals from two to three and correspondingly provide that a decision of that board would require the favorable votes of two of the three.[12]

The Attorney General has advised that after the office of county coroner had been abolished by referendum, a county board could not re-establish the same office under another name.[13]

In another case the method of selection of a county board chairman was changed, by countywide referendum as allowed in subsection 4(c), third sentence, from appointment to election. The Illinois Supreme Court upheld the change.[14] On the other hand, the court has held that the authority given by subsection 4(c) for a change by law in the manner of selection of some county officers could not be used to permit vacancies to be filled by the county political party central committee of the same party as the vacating officer, since that was an unconstitutional delegation of power to a private body.[15]

(d) County officers shall have those duties, powers and functions provided by law and those provided by county ordinance. County officers shall have the duties, powers or functions derived from common law or historical precedent unless altered by law or county ordinance.

County officers have both common-law powers and powers given by statute or ordinance, but the common-law powers can be changed by statute or ordinance. This provision overruled an old decision by the Illinois Supreme Court that the historical powers of a sheriff, including custody of court buildings, could not be taken away by law.[16]

(e) The county treasurer or the person designated to perform his functions may act as treasurer of any unit of local government and any school district in his county when requested by any such unit or school district and shall so act when required to do so by law.

This provision was included in the hope that it might save money by leading to unification of financial functions of various local governments in a single county office.[17] Only one or two statutes require county treasurers to act as treasurers for other units of local government.[18]

SECTION 5. TOWNSHIPS

The General Assembly shall provide by law for the formation of townships in any county when approved by county-wide referendum. Townships may be consolidated or merged, and one or more townships may be dissolved or divided, when approved by

referendum in each township affected. All townships in a county may be dissolved when approved by a referendum in the total area in which township officers are elected.

The continued existence of township government in Illinois has been controversial. This section says individual townships may be abolished by referendum. But there do not appear to be any statutory provisions for doing this, which would need to include a transfer of the functions performed by the abolished township to another unit of local government.[19] A law encourages county boards to adopt plans to consolidate or subdivide townships (subject to referendum), so that none will have less than $10 million in assessed valuation or more than 126 square miles.[20]

The Illinois Supreme Court has held that if a city annexes land in an adjoining township, thus automatically causing the land to become part of a township that is legally coterminous with the city, the result is not a division of a township within the meaning of this section so as to require referendum approval.[21]

SECTION 6. POWERS OF HOME RULE UNITS

Introduction

The most important innovation in the 1970 Constitution was home rule, granted by this section to municipalities of over 25,000 and any county that elects a chief executive officer (so far only Cook County). Any municipality or county may become, or cease to be, a home-rule unit by referendum. Home rule reversed the long-established "Dillon's Rule" regarding the powers of local governments, which stated that they have only powers given by statute.[22] The scope of home-rule powers was intentionally made broad and imprecise, to give local governments freedom to try to solve their own problems without statutory authorization. The main limits on home-rule powers stated in this section are these:

- Actions under home rule must pertain to a home-rule unit's government and affairs rather than problems of the area, state, or nation (subsection (a)).
- Some powers are constitutionally restricted or denied to home-rule units (subsections (d) and (e)).
- The General Assembly by majority vote can provide for exclusive exercise by the state of what would otherwise be home-rule powers (subsection (h)).
- The General Assembly by three-fifths vote in each house can block home-rule actions on a given subject even if the state does not exercise its powers on that subject (subsection (g)).

Regarding the relationship between state laws and home-rule ordinances, the Illinois Supreme Court has repeatedly held that:

- An ordinance that is within home-rule powers supersedes, inside the home-rule unit, a conflicting law enacted before the 1970 Constitution took effect.[23]
- Even a law enacted after the 1970 Constitution took effect will not limit home-rule powers unless it explicitly says it is intended to do so.[24]
- A statute giving significant powers to non-home-rule municipalities, but purportedly not applying to municipalities that have home rule, unconstitutionally discriminates against home-rule units and therefore must be applied to all municipalities.[25]

Due to the interrelations among various parts of section 6, this commentary will discuss it as a whole before dealing with issues specific to each subsection.

Powers Home-Rule Units Can Exercise

Taxation

These major kinds of home-rule taxes have been upheld by the Illinois Supreme Court:

- Alcoholic beverages—retail sale, tax based on amount and alcohol content.[26]
- Cigarettes—sale and use, tax based on number.[27]
- Employment—a monthly amount for each person employed.[28]
- Motor vehicles—operation in city by residents, or in unincorporated areas of home-rule county by residents of those areas.[29]
- Parking in a parking garage.[30]
- Property, specified kinds—sale or rental.[31]
- Theaters and other amusements—attending.[32]

It is also clear that home-rule units can, without statutory authorization, levy property taxes above the limits that would otherwise apply (subject to any debt limits in subsection 6(k)).[33]

However, the General Assembly has taken away from home-rule municipalities and counties the powers to tax the sale, purchase, and use of tangible personal property based on price or gross receipts (such as by "sales" and use taxes), except for the following kinds of taxes:

- The statutorily authorized home-rule municipal and county retailers' occupation, service occupation, and use taxes.
- The statutorily authorized tax on soft drinks in Chicago.
- Alcoholic beverage taxes.
- Taxes on cigarettes and other tobacco products (in a home-rule county, and in home-rule municipalities that imposed such taxes before July 1993).
- Taxes on use of hotel or motel rooms.
- Taxes on lease receipts.
- Taxes on food and/or alcoholic drinks prepared for immediate consumption.
- In a home-rule county, taxes on transfers of real property, [34]

In addition, the Illinois Supreme Court struck down Chicago's "service tax" on amounts paid by consumers for services,[35] and a gross-revenue tax on utility bills.[36] The Illinois Supreme Court also held that Cook County could not change the schedule for collecting the property tax (since that would affect all taxing units in the county, not only the county government)[37] or levy a higher court filing fee than provided by law (since such fees restrict admission to the state's courts).[38] Similarly, the Supreme Court held that a home-rule city could not impose tax-collection and recordkeeping requirements on a school district, because of the pervasive state involvement in and regulation of local schools; but a park district did have to comply with the city's tax ordinance.[39] The court has also upheld a Chicago tax on boat moorings at facilities of the Chicago Park District.[40]

Criminal law

An Illinois Appellate Court decision said a home-rule unit must expunge the arrest records of some arrested persons if required by law, even if its ordinances should provide otherwise.[41] The Attorney General has advised that a home-rule unit cannot contravene a state criminal law, such as by authorizing gambling.[42] On the other hand, before the General Assembly enacted a law[43] pre-empting local setting of minimum drinking ages, Illinois Appellate Court cases held that home-rule units could ban sales of alcohol to persons who were above the state's minimum drinking age at that time for beer and wine (19) but were not yet 21, thus raising the drinking age within their boundaries to 21;[44] and could otherwise regulate alcohol retailing more strictly than state law did.[45]

The above authorities indicate that although home-rule units cannot permit what the General Assembly has prohibited, they *can* prohibit what the General Assembly has not chosen to prohibit—unless the General Assembly actually pre-empts such a prohibition. As an example of this general principle, Illinois and federal cases have upheld home-rule ordinances prohibiting possession of handguns by most persons.[46] Possibly contrary to these cases was a decision by an Illinois Appellate Court panel that a home-rule unit could not define a crime (in this case, trespass) more broadly than the state's Criminal Code of 1961 defined it.[47]

Business regulation

Illinois Appellate and Supreme Court decisions have upheld home-rule ordinances imposing some requirements on lessors of real property in their dealings with tenants.[48] Appellate Court decisions have upheld home-rule ordinances regulating massage parlors,[49] requiring sprinklers in nursing homes,[50] and requiring towing companies to post signs warning that unauthorized cars would be towed.[51]

The Illinois Supreme Court has held that although the state's Highway Advertising Control Act of 1971 opens with a general statement that local regulation of billboards should be consistent with the Act, this statement does not prevent home-rule units from more restrictively regulating billboards since the Act does not specifically say they cannot.[52]

Debt

A home-rule unit is not bound by pre-1970 Constitution laws limiting how much debt it can incur.[53] An Illinois Appellate Court panel even upheld a home-rule municipality's issuance of revenue bonds to finance construction of stores within 10 miles outside its boundaries, for the stated purpose of providing jobs for its residents. But the court cautioned that such an action might not be constitutional in all situations.[54] Subsections 6(j) and (k) set standards for statutory limits on local debt.

Form of government

Subsection 6(f) says a home-rule municipality can provide for local officers and their selection and terms only as allowed by statute or referendum. Thus, unless changed by referendum, a municipality must operate under one of the forms of government allowed in the Illinois Municipal Code. The courts have upheld ordinances that were approved by referendum to change the office of village clerk from elective to appointive and increase the number of village trustees,[55] and to change a city's elections from partisan to nonpartisan.[56] On the other hand, the courts have struck down attempts without referendum to make basic changes in a city's form of government, such as transferring the power to appoint major municipal officers from the mayor to the council[57] or, in a commission city, transferring power to hire and fire city employees from individual commissioners to their subordinate department heads.[58]

The Illinois Supreme Court has held that the Cook County Board could not, by ordinance without referendum approval, increase the size of the Cook County Board of (tax) Appeals from two to three.[59] The court also held that a simple reduction in the number of votes on the Cook County Board needed to appropriate a large amount of money did not constitute a change in the county's form of government so as to require referendum approval.[60] But a reduction in the majority needed to override a veto by the president of the board was such a change, and thus invalid without referendum approval.[61] A later Illinois Appellate Court de-

cision struck down attempts, by Cook County ordinance without referendum, to transfer, contrary to statute, the power to hire commissioners' staffers from the County Board President to the individual commissioners, and to give a group of commissioners power to approve expenditures in connection with employment of commissioners' staff.[62] The court held that these ordinances were unconstitutional attempts to alter the county's form of government without referendum.

Personnel and public contracts

The Supreme Court has held that a home-rule municipality may, without referendum, abolish civil-service restrictions on police appointments[63] or reduce the mandatory retirement age for firefighters from the statutory 63 to 60 years.[64] Illinois Appellate Court decisions have held that a home-rule city need not follow statutory procedures for dismissing personnel,[65] and can impose heavier sanctions for misconduct on firefighters than are allowed by statute.[66] But another Appellate Court decision held that home rule does not insulate a city from the prohibition in this article's subsection 9(b) on raising the salary of an elected officer during the officer's term.[67]

The Illinois Supreme Court has held that a home-rule city must follow the state's "prevailing wage" law.[68]

Statutory Restriction of Home-Rule Powers

Some kinds of activities are forbidden to home-rule units by subsection 6(d) or restricted by subsection 6(e). Under subsection 6(d), a home-rule unit cannot incur debt payable from property tax for a term longer than 40 years, or create a felony. Subsection 6(e) says a home-rule unit can create a crime punishable by more than 6 months' confinement, or impose a licensing or earnings tax, only if permitted by law. Thus these activities are forbidden in the absence of an authorizing statute.

Any other home-rule activities, except those described in subsection 6(*l*), can be forbidden by law. Depending on whether the state regulates the same area, such a law will require either an ordinary constitutional majority or a three-fifths majority in each house to have that effect. If the state regulates the area, a mere constitutional majority in each house is enough to block home-rule powers (subsection 6(h)). If the state does not regulate the area, a three-fifths majority in each house is needed (subsection 6(g)).

The General Assembly has used these powers to exclude home-rule units from a number of activities. These include the licensing of a large number of professions and occupations that the state licenses;[69] changing the minimum drinking age;[70] and reducing the requirements of the Open Meetings Act.[71]

Pre-emption of ordinances

The doctrine that a law may cover a subject so comprehensively as to block regulation of that subject by lower levels of government is called "pre-emption." Several Appellate Court decisions have invalidated home-rule ordinances on the ground that a state law occupied the field—even though that state law did not explicitly limit home-rule powers. The opinions in some of these cases used the term "pre-emption"[72] while others simply said that the comprehensiveness of the state law removed the subject from the scope of home rule.[73] It is not clear whether these cases can be reconciled with the statute which says that a law does not restrict home-rule powers unless it explicitly says so.[74] Furthermore, the Illinois Supreme Court has repeatedly[75] (and in recent cases emphatically[76]) said that any limitation of home-rule powers in a statute, to be effective, must be explicit. It is not clear that these holdings can be reconciled with an earlier case saying that under the state's Prevailing Wage Act, home-rule units must require contractors on public projects to pay wages determined to be "prevailing" even though the Act does not address home rule.[77]

In one of the Appellate Court cases referred to above, the majority based its decision against home-rule powers on the interesting argument that because a state agency had regulated a particular subject for a considerable time *before* the 1970 Constitution, the delegates

(and voters) in 1970 could not have considered that subject a matter of merely local concern and thus within the scope of home rule.[78] Given the wide variety of state regulatory laws enacted both before and after the 1970 Constitution, the conflict between home rule and state pre-emption may continue to be troublesome.

Another unresolved question is how large a majority is needed in each house of the General Assembly to regulate the operations of a home-rule unit itself, as opposed to regulating private entities that home-rule units may want to regulate. The proceedings of the 1970 constitutional convention are inconclusive on this point,[79] and there appear to be no court decisions conclusively deciding it.[80]

An Illinois Appellate Court decision held that Article 13, section 4 on sovereign immunity prevents home-rule units from re-establishing sovereign immunity for themselves.[81]

Text and Commentary

The text of section 6 follows, with commentary after each subsection on issues specific to it.

(a) A County which has a chief executive officer elected by the electors of the county and any municipality which has a population of more than 25,000 are home rule units. Other municipalities may elect by referendum to become home rule units. Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt.

The County Executive Law within the Counties Code allows the voters of a county to adopt the county executive form of government. At the option of the county board if it proposes the referendum, or of the persons who draft a petition requesting a referendum if that method is used, the ballot question is to propose either that the county adopt the county executive form of government *with* home rule, or that the county adopt that form of government *without* home rule.[82] At least 11 Illinois counties have held referenda that could have resulted in adopting home rule (apparently all in the 1970s). All were defeated, and Cook County is still the only Illinois county with home rule.

Illinois courts have upheld the automatic grant of home rule to municipalities of over 25,000, against claims that it violates the equal voting rights of their residents (because their governing bodies get home rule automatically, while governing bodies of less populous municipalities get it only if approved by referendum). The courts said that large communities have greater problems and need more powers than small ones.[83] A law provides that if a municipality has home rule because its population exceeds 25,000, but its population then drops below the threshold, it will keep home rule by statute unless voters abolish it at a referendum. Such a referendum must be held at the first general election after an official census shows the population under 25,001, unless there has been such a referendum in the past 2 years.[84]

Local versus state powers

The Illinois Supreme Court has said that it looks at three general things to help determine whether an issue is one "pertaining to [home-rule units'] government and affairs" or is instead a matter of regional or statewide concern: (1) the nature and extent of the problem that governments are trying to solve; (2) which units of government have the most vital interest in solving it; and (3) the roles traditionally played by local and state authorities in addressing that problem.[85] The introduction above, and commentary following the remaining parts of this section, addresses specific issues that have arisen in conflicts between home-rule and regional or state powers.

(b) A home rule unit by referendum may elect not to be a home rule unit.

Home rule has been abandoned by a few Illinois municipalities—most notably Rockford in 1983.

(c) If a home rule county ordinance conflicts with an ordinance of a municipality, the municipal ordinance shall prevail within its jurisdiction.

The Illinois Supreme Court held that imposition of nearly identical taxes (on sales of motor vehicles) by Cook County and several of its municipalities did not create a conflict between the county and the municipalities; both kinds of taxes must be paid.[86] On the other hand, an Appellate Court case held that a home-rule county need not get approval of a home-rule city to expand a county highway that was on the edge of the city and partly within it.[87]

The Illinois Supreme Court has noted that a home-rule unit has no extraterritorial powers under the Constitution, and so can act outside its boundaries only with statutory authority.[88] The General Assembly has given at least one significant extraterritorial power to municipalities (with or without home rule): to plan and zone unincorporated land for 1½ miles outside their boundaries. This power exists only where there is no county zoning.[89]

(d) A home rule unit does not have the power (1) to incur debt payable from ad valorem property tax receipts maturing more than 40 years from the time it is incurred or (2) to define and provide for the punishment of a felony.

The same debt restrictions are imposed on non-home-rule local governments (see this article's sections 7 and 8). The Appellate Court has held that a home-rule city could impose higher minimum fines for ordinance violations than state law authorized municipalities to impose.[90]

(e) A home rule unit shall have only the power that the General Assembly may provide by law (1) to punish by imprisonment for more than six months or (2) to license for revenue or impose taxes upon or measured by income or earnings or upon occupations.

Subdivision (e)(2) was intended to prevent home-rule units from imposing, without statutory authority, income or similar taxes, or licensing taxes that are designed to raise revenue and are set at substantially higher levels than needed to cover the cost of regulation. The Illinois Supreme Court has struck down local ordinances imposing taxes on utility companies (or their customers) calculated as a percentage of gross revenue of the companies, saying they were occupation taxes that had not been authorized by statute.[91] This does not affect the validity of the municipal utility tax authorized by law.[92] The court also struck down a Chicago ordinance imposing a "service tax" analogous to a sales tax, on amounts paid by consumers for services, since this was a tax "measured by income or earnings or upon occupations" and had not been authorized by law.[93] And the court struck down a city tax on membership fees for health and racquetball clubs, saying it was a "service occupation tax."[94]

Similarly, the Illinois Supreme Court has held invalid a home-rule tax on operators of racetracks at the rate of 10¢ per spectator. The court said this was a tax on occupations, since (1) it applied only to racetrack operators and (2) the "legal incidence" of the tax was on them.[95]

(f) A home rule unit shall have the power subject to approval by referendum to adopt, alter or repeal a form of government provided by law, except that the form of government of Cook County shall be subject to the provisions of Section 3 of this Article. A home rule municipality shall have the power to provide for its officers, their manner of selection and terms of office only as approved by referendum or as otherwise authorized by law. A home rule county shall have the power to provide for its officers, their manner of selection and terms of office in the manner set forth in Section 4 of this Article.

Thus a municipality must operate under one of the forms of government set forth in the Illinois Municipal Code unless its voters approve a change. As discussed in the Introduction above under "Form of government," the Illinois courts have upheld municipal changes, approved by referendum, from an elected to an appointed village clerk and from partisan to nonpartisan local elections; but the courts have held invalid attempts without referendum to change basic features of a statutory form of government, such as transferring power to appoint major municipal officers from the mayor to city council or, in a commission city, transferring power to hire and dismiss employees from individual commissioners to their subordinate department heads.[96]

The Illinois Supreme Court held that a reduction in the majority of the Cook County Board needed to appropriate a substantial sum of money did not amount to a change in the county's form of government so as to require referendum approval; but that a reduction in the majority needed to override a veto by the board president did constitute a change in the form of government and thus was invalid without referendum approval.[97]

Where a "referendum" on requiring runoff elections was passed before an actual ordinance to do so was drafted, and the ordinance went beyond what the referendum question described, the Illinois Supreme Court held the ordinance invalid.[98]

The Illinois Supreme Court has held that members of a board of police commissioners are not "officers" of a home-rule government described in this subsection, so their selection could be changed without a referendum;[99] and that a home-rule municipality may, without referendum, abolish civil-service restrictions on police appointments.[100]

Section 7 allows non-home-rule units to make the same kinds of changes by referendum as are allowed by this subsection. However, as noted in the commentary to that section, the courts have not interpreted those powers liberally.

> **(g) The General Assembly by a law approved by the vote of three-fifths of the members elected to each house may deny or limit the power to tax and any other power or function of a home rule unit not exercised or performed by the State other than a power or function specified in subsection (*l*) of this section.**
>
> **(h) The General Assembly may provide specifically by law for the exclusive exercise by the State of any power or function of a home rule unit other than a taxing power or a power or function specified in subsection (*l*) of this Section.**
>
> **(i) Home rule units may exercise and perform concurrently with the State any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State's exercise to be exclusive.**

These three subsections allow the General Assembly to restrict or prohibit the exercise by home-rule units of any powers except those guaranteed by subsection 6(*l*). This subject is discussed in more detail under "Statutory Restriction of Home-Rule Powers" above. If the state does not regulate a particular activity, a three-fifths majority in each house is needed to prohibit home-rule units from regulating it (subsection 6(g)). If the state does regulate it, a mere majority of the members elected to each house is sufficient (subsection 6(h)). In the latter situation, to the extent the statute does not specifically limit or prohibit home-rule powers, home-rule units can exercise them in addition to the state's exercise (subsection 6(i)).

Two major areas of such "concurrent" state-local regulation are discussed below, along with a subject (zoning) that sometimes causes conflicts between adjoining units of local government.

Alcoholic beverages

Persons selling alcoholic drinks must in general comply with both state and home-rule regulation. Illinois Appellate Court decisions have held that a home-rule city may require managers of establishments selling liquor to live inside the city, even though a state law that did not specifically limit home-rule powers purported to preclude such a requirement;[101] and that even though the state at the time prohibited only persons under 19 from drinking

beer and wine, home-rule units could extend the prohibition to cover all persons under 21.[102] (However, the General Assembly later pre-empted home-rule power to set a minimum drinking age.)[103] Other Appellate Court decisions held that home rule did not prevent enforcement of local-option referenda, allowed by state law, prohibiting sale of alcoholic drinks in individual precincts.[104] In those cases there were no home-rule ordinances specifically permitting alcohol sales, so there was no conflict between state and home-rule powers. But on the different subject of property taxes, the Illinois Supreme Court has held that even a local referendum permitted by statute cannot limit the tax rate to be levied by a home-rule unit.[105] In that case a home-rule ordinance imposing a higher tax rate created a conflict between the referendum and home-rule powers.

Environmental protection

The powers of different levels of government often conflict regarding environmental protection. In general, the state's Environmental Protection Act and regulations under it are the final authority for resolving such conflicts, even involving home-rule units.[106] The courts have also said the following on this subject:

- Home rule does not empower a local unit to require a regional or larger governmental agency to comply with the local unit's environmental protection requirements[107] or to regulate pollution originating beyond the home-rule unit's boundaries,[108] since such actions would not be "pertaining to its government and affairs" (subsection 6(a)).
- On the other hand, a home-rule municipality can restrict water pollution releases within its borders by a regulated utility company.[109]
- Home-rule units may "legislate concurrently" with the state regarding such things as landfills.[110]
- Non-home-rule units cannot by zoning prevent establishment of landfills that have been approved by the Illinois Environmental Protection Agency.[111] However, the General Assembly has since amended the Environmental Protection Act to help resolve disputes between state and local environmental regulation. These provisions (1) establish procedures for municipal or county decisions on whether to allow regional pollution control facilities[112] and (2) prohibit Illinois EPA issuance of permits for most kinds of pollution facilities unless their plans meet local zoning and similar requirements.[113] That prohibition was applied in a 1990 case.[114]

Zoning

Home-rule units can generally zone land subject only to constitutional requirements; they need not comply with zoning provisions of state law.[115] The courts have also to some extent upheld the power of home-rule units to control construction within their boundaries by other units of government. The Illinois Supreme Court held that a park district must comply with the zoning ordinance of a home-rule municipality in which it is located.[116] Illinois Appellate Court cases have held that a county must comply with building, electrical, sewer, and similar ordinances of a home-rule municipality in which it builds a dog pound (but not with the municipality's zoning ordinances, since that would tend to frustrate the legislative intent behind the Animal Control Act);[117] and that a public building commission must comply with a home-rule municipality's building regulations.[118]

On the other hand, the courts have rejected attempts by home-rule municipalities to control construction intended to benefit transportation through and beyond municipal boundaries. These included attempts by municipalities to require their approval of county projects to widen county roads passing through their territory[119] and an attempt by a home-rule city to prevent establishment of a regional bus storage and maintenance center by a division of the Regional Transportation Authority.[120]

(j) The General Assembly may limit by law the amount of debt which home rule counties may incur and may limit by law approved by three-fifths of the members elected

to each house the amount of debt, other than debt payable from ad valorem property tax receipts, which home rule municipalities may incur.

(k) The General Assembly may limit by law the amount and require referendum approval of debt to be incurred by home rule municipalities, payable from ad valorem property tax receipts, only in excess of the following percentages of the assessed value of its taxable property: (1) if its population is 500,000 or more, an aggregate of three percent; (2) if its population is more than 25,000 and less than 500,000, an aggregate of one percent; and (3) if its population is 25,000 or less, an aggregate of one-half percent. Indebtedness which is outstanding on the effective date of this Constitution or which is thereafter approved by referendum or assumed from another unit of local government shall not be included in the foregoing percentage amounts.

In other words:

(1) The General Assembly can limit how much debt can be incurred by a home-rule *county*, in a law passed by a constitutional majority in each house.
(2) The General Assembly can limit debt that can be incurred by home-rule *municipalities* (except debt to be repaid from property taxes) in a law passed with a three-fifths majority in each house.
(3) Home-rule municipalities, without legislative or referendum approval, can incur debt payable from property taxes up to the percentages of assessed value stated in subsection 6(k). Debt that existed when the 1970 Constitution took effect, or that has been approved by referendum or assumed from other local governments, does not count toward those percentage limits.

One of the first home-rule court decisions held that home-rule Cook County was not bound by a law passed before the 1970 Constitution that required referendum approval to issue bonds.[121] Under subsection 6(j), a home-rule county can incur debt unless that power is limited by law.

(*l*) The General Assembly may not deny or limit the power of home rule units (1) to make local improvements by special assessment and to exercise this power jointly with other counties and municipalities, and other classes of units of local government having that power on the effective date of this Constitution unless that power is subsequently denied by law to any such other units of local government or (2) to levy or impose additional taxes upon areas within their boundaries in the manner provided by law for the provision of special services to those areas and for the payment of debt incurred in order to provide those special services.

The authority for home-rule units to make improvements, or provide services, to special areas inside their boundaries or jointly with other units of government was intended to provide an alternative to creating new special districts to provide limited services in those areas. Non-home-rule units also have these powers under section 7. Before the General Assembly had "provided by law" a method for home-rule units to levy additional taxes on limited areas within their boundaries to pay for special services, the Illinois Supreme Court held that they could not do so.[122] Such a law was later passed and the Illinois Supreme Court upheld its application.[123]

(m) Powers and functions of home rule units shall be construed liberally.

This provision was intended to prevent courts from reinstating "Dillon's Rule" indirectly by strictly construing home-rule powers.

SECTION 7. COUNTIES AND MUNICIPALITIES OTHER THAN HOME RULE UNITS

Counties and municipalities which are not home rule units shall have only powers granted to them by law and the powers (1) to make local improvements by special assessment and to exercise this power jointly with other counties and municipalities, and other classes of units of local government having that power on the effective date of this Constitution unless that power is subsequently denied by law to any such other units of local government; (2) by referendum, to adopt, alter or repeal their forms of government provided by law; (3) in the case of municipalities, to provide by referendum for their officers, manner of selection and terms of office; (4) in the case of counties, to provide for their officers, manner of selection and terms of office as provided in Section 4 of this Article; (5) to incur debt except as limited by law and except that debt payable from ad valorem property tax receipts shall mature within 40 years from the time it is incurred; and (6) to levy or impose additional taxes upon areas within their boundaries in the manner provided by law for the provision of special services to those areas and for the payment of debt incurred in order to provide those special services.

Even counties and municipalities without home rule are guaranteed six of the powers that home-rule units are given by section 6. This changed the previous rule that local governments had only the powers given them by statute. In addition to these powers, Article 9, subsection 4(a) allows counties of over 200,000 to divide real property into classes with different tax rates (subject to some limitations).

The very few court decisions on powers guaranteed to non-home-rule units have not interpreted them broadly.[124] As noted under subsection 3(a), the Illinois Supreme Court held that county voters by referendum could not change the size of their county board. The court stated that a change in the size of a local governing board is not a change in the local unit's "form of government" under subdivision (2) of this section.[125] An Illinois Appellate Court decision held that subdivision (2) allowing an alteration in form of government, and subdivision (3) allowing a change in municipal officers, manner of selection, and terms of office, did not authorize a local referendum that would allow recall of local officers.[126] And an Illinois Appellate Court case appeared to say that a non-home-rule municipality cannot by referendum modify the forms of government provided in the Illinois Municipal Code.[127]

Subdivisions (5) and (6) of this section were in part intended to reduce the pressure to form special districts (such as water districts, fire protection districts, and mosquito abatement districts), some of which were formed because existing units of local government had too little borrowing or other powers to provide those services.

SECTION 8. POWERS AND OFFICERS OF SCHOOL DISTRICTS AND UNITS OF LOCAL GOVERNMENT OTHER THAN COUNTIES AND MUNICIPALITIES

Townships, school districts, special districts and units, designated by law as units of local government, which exercise limited governmental powers or powers in respect to limited governmental subjects shall have only powers granted by law. No law shall grant the power (1) to any of the foregoing units to incur debt payable from ad valorem property tax receipts maturing more than 40 years from the time it is incurred, or (2) to make improvements by special assessments to any of the foregoing classes of units which do not have that power on the effective date of this Constitution. The General Assembly shall provide by law for the selection of officers of the foregoing units, but the officers shall not be appointed by any person in the Judicial Branch.

As to these limited-purpose units of government, the rule still applies that they have no powers except those given by statute. Furthermore, no statute can authorize them to borrow money repayable from property taxes for a longer time than the Constitution allows

non-home-rule municipalities and counties to borrow (40 years), or give the power to make special tax assessments for special improvements to any of these units that did not have that power when this Constitution took effect.

The Illinois Supreme Court has held that a park district must comply with the zoning ordinance of the municipality in which it is located.[128]

The prohibition on appointments by anyone in the judicial branch eliminated the last remnants of the powers of county judges to appoint officers of special districts. Some of these powers had been kept when county judges became circuit judges under the 1962 Judicial Article, effective in 1964.

SECTION 9. SALARIES AND FEES

(a) Compensation of officers and employees and the office expenses of units of local government shall not be paid from fees collected. Fees may be collected as provided by law and by ordinance and shall be deposited upon receipt with the treasurer of the unit. Fees shall not be based upon funds disbursed or collected, nor upon the levy or extension of taxes.

This prohibits the fee system used under the 1870 Constitution, in which the salaries of various local officers were paid only from fees their offices collected, and any excess went into the local treasury. The Illinois Supreme Court under this section held invalid laws that allowed a recorder of deeds to keep half the price of Real Estate Transfer Tax stamps as fees;[129] that allowed township or county collectors to take deductions or fees from taxes collected for other units of local government;[130] and that allowed sheriffs to keep a percentage of the proceeds of judicial sales of property.[131]

On the other hand, an Illinois Appellate Court decision held that this subsection is not violated by laws authorizing a county recorder of deeds to collect a fee to pay expenses for automation of the office. The court said that because the fees were paid into the county treasury and controlled by county appropriation, the purpose of this subsection to abolish "fee offices" was satisfied.[132] And an Attorney General's opinion advised that fines and forfeitures are not "fees" within the meaning of this section, and thus may be put into a fund going toward payment of the salaries of a state's attorney and assistants.[133]

The Illinois Supreme Court has held that a county cannot constitutionally keep interest earned on tax monies the county treasurer has collected for distribution to other taxing districts in the county,[134] and that the state cannot keep interest earned on Municipal Retailers' Occupation (sales) Tax receipts collected for local governments that levy that tax.[135] But an Appellate Court decision said a county treasurer when acting as *ex officio* treasurer of a drainage district is entitled, as provided by statute, to be reimbursed by that district for his expenses as its treasurer.[136]

(b) An increase or decrease in the salary of an elected officer of any unit of local government shall not take effect during the term for which that officer is elected.

The Illinois Supreme Court under this provision held that supplements to raise county clerks' salaries, provided by a law whose effective date was during their terms of office, could not be paid during those terms.[137]

An Illinois Appellate Court decision has held that this prohibition may not be avoided by adding to a mayor's salary a new, separate amount for his duties as liquor control commissioner—a post he had held during his entire term as mayor. The court noted that home rule does not supersede the prohibition of this subsection.[138] On the other hand, the Illinois Supreme Court has held that the Cook County Board did not violate this subsection by raising members' salaries after the election but before they began their new terms[139]—an action similar to one by the General Assembly that an Appellate Court case also upheld.[140]

A series of Attorney General's opinions advised that an officer's compensation may change during the officer's term due to changing population in the officer's constituency or

due to inflation, if the method of increase is objective and set before the beginning of the term.[141] Several other Attorney General's opinions have dealt with applications of this subsection to specific situations.[142]

The Illinois Supreme Court has held that this section does not prohibit increases in the salaries of state's attorneys during their terms. The reasoning of the majority was basically that although state's attorneys are elected by voters in each county, they are officers of the state (provided for in Article 6, section 19).[143]

SECTION 10. INTERGOVERNMENTAL COOPERATION

> **(a) Units of local government and school districts may contract or otherwise associate among themselves, with the State, with other states and their units of local government and school districts, and with the United States to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or by ordinance. Units of local government and school districts may contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law or by ordinance. Participating units of government may use their credit, revenues, and other resources to pay costs and to service debt related to intergovernmental activities.**
>
> **(b) Officers and employees of units of local government and school districts may participate in intergovernmental activities authorized by their units of government without relinquishing their offices or positions.**
>
> **(c) The State shall encourage intergovernmental cooperation and use its technical and financial resources to assist intergovernmental activities.**

This innovation in the 1970 Constitution is a further attempt to provide an alternative to creation of special districts. It is supplemented by the Intergovernmental Cooperation Act,[144] which repeats much of the substance of this section but includes more detailed authority for cooperation among government units. Two major issues that have arisen under these provisions are discussed below.

Kinds of permissible agreements

Two decisions by the Illinois Appellate Court in the Second District held that two municipalities separated by an unincorporated area could not make an enforceable agreement marking a boundary line running between them up to which each would annex,[145] even though in the second case the agreement was alleged to be supported by this section and the Act.[146] The court considered such agreements as attempts to give each municipality a power (to block the other municipality from annexing over the boundary line) that it did not have before the agreement. But the agreements could instead have been construed simply as a judicially enforceable promise by each municipality *not* to exercise its existing annexation power beyond the boundary line; then the agreements presumably would have been authorized by this section and the Act. In any event, the General Assembly later amended the Illinois Municipal Code to give neighboring municipalities express authority to make such agreements.[147] And an Illinois Appellate Court decision held that this section authorized a city and county to make an agreement under which the county would condemn land for public use—even though the condemnation was intended partly to benefit the city, and the city itself was not authorized by statute to condemn the land.[148]

The Attorney General has advised that this section allows one municipality to contract to provide police protection to others,[149] and permits a county to contract to provide protection to a municipality[150] or to a homeowners' association in an unincorporated area.[151]

Other Attorney General's opinions have advised that this section authorizes a county to contract with a municipality for the state's attorney to prosecute violations of city ordinances, if the state's attorney agrees;[152] to contract with a private firm to bid on properties at

tax sales;[153] or to contract with licensed veterinarians to confine dangerous dogs.[154] On the other hand, the Attorney General advised that the county board of a non-home-rule county could not contract with a nonprofit organization to provide information or services to the aged, since the county had no statutory authority to provide such services itself.[155] This follows the apparent intent in this section to allow transfer of powers where they already exist, but not creation of any new powers.

Liability under agreements

A 1990 case in the U.S. Court of Appeals in Chicago addressed the troublesome issue of liability under intergovernmental agreements. The city of Waukegan made such an agreement with the county, giving the county authority to patrol their joint waterfront. A boy drowned, allegedly due to a county policy (enforced in part by a city police officer on the scene) to stop private persons from rescuing drowning persons. His mother sued both the city and the county, arguing that the city was liable for acquiescing in the county's policy, which allegedly violated the boy's constitutional right not to be deprived of life without due process of law. While holding that the county could be liable, the Court of Appeals said the city was not liable because under the agreement the city "had no authority to influence the county's procedures" and was at most only vicariously responsible for the county's actions—which under federal court cases was not sufficient to make it liable.[156]

SECTION 11. INITIATIVE AND REFERENDUM

> **(a) Proposals for actions which are authorized by this Article or by law and which require approval by referendum may be initiated and submitted to the electors by resolution of the governing board of a unit of local government or by petition of electors in the manner provided by law.**
>
> **(b) Referenda required by this Article shall be held at general elections, except as otherwise provided by law. Questions submitted to referendum shall be adopted if approved by a majority of those voting on the question unless a different requirement is specified in this Article.**

Subsection (b) applies only to referenda required by this Article 7. Thus the Illinois Supreme Court held that the referendum on creating the Regional Transportation Authority in the Chicago area could be passed by a majority of voters properly marking ballots rather than the higher standard of a majority of those voting on the question, since it was not a referendum required by this article.[157] A section in the Election Code establishes procedures for local referenda held under this Constitution.[158]

SECTION 12. IMPLEMENTATION OF GOVERNMENTAL CHANGES

> **The General Assembly shall provide by law for the transfer of assets, powers and functions, and for the payment of outstanding debt in connection with the formation, consolidation, merger, division, dissolution and change in the boundaries of units of local government.**

The intent behind this section was to make it easier for local government units to be changed and consolidated. A few statutes predating the 1970 Constitution provide for consolidation of adjacent government units.[159] The Attorney General has advised that in the absence of a statute providing for dissolution of a kind of unit of local government, it may not be dissolved.[160]

Article 8. Finance

A new Finance Article replaced various restrictions on uses of public funds and credit with a single requirement that public assets and credit be used only for public purposes. It also required that records pertaining to public funds be available; that the state have annual budgets; and that new auditing systems be used.

SECTION 1. GENERAL PROVISIONS

(a) Public funds, property or credit shall be used only for public purposes.

This provision replaced various restrictions on uses of public funds or credit in the 1870 Constitution with the single restriction that public assets and credit may be used only for public purposes. The Illinois Supreme Court has upheld, as serving a public purpose, use of public assets or credit for urban redevelopment,[1] industrial development,[2] creation of and aid to mass transit,[3] expanding facilities for the public to attend sporting events,[4] enforcing child-support obligations,[5] and even transportation of students to private schools along regular public school bus routes.[6] The fact that some benefits will flow to private organizations does not make expenditures unconstitutional, if those expenditures serve a public purpose.[7] But the court held that paying legal fees for the defense of public officials against criminal charges, which did not arise from lawful exercise of the powers of their offices, is not a public purpose under this provision.[8]

Several Attorney General's opinions have addressed the lease of county-owned real estate to other persons or organizations. These opinions advised that not only must such leases be for adequate consideration to the county (unless the county is authorized by law to make a donation to the lessee),[9] but the use to which the lessee puts the property must itself benefit the public, such as providing space for other units of government or for legislators.[10] But the outright sale of public property to anyone is permitted, provided the price is adequate.[11] The Attorney General has also stated that use of public funds for political campaigns is unconstitutional.[12]

(b) The State, units of local government and school districts shall incur obligations for payment or make payments from public funds only as authorized by law or ordinance.

As the committee that proposed this provision at the constitutional convention stated, it is intended to say clearly that only legislative bodies, at the state or local level, may authorize the spending of funds. The Committee's proposal commented: "The judicial and executive branches may make decisions which affect expenditure of funds, but they do not have the power to authorize the expenditure."[13] The policy of this subsection is also repeated in a statute prohibiting state officers and agencies from contracting any indebtedness on behalf of the state, or assuming to bind the state, in an amount exceeding what is appropriated, "unless expressly authorized by law."[14]

The Illinois Supreme Court has upheld a statute providing for issuance of some bonds, which stated that if the General Assembly did not appropriate enough money to pay off the bonds, that statute would act as an irrevocable, continuing appropriation of money for that purpose.[15] The court said there is no requirement that every appropriation be limited to one year—although section 2 of this article does provide for an annual *process* of budgeting and appropriation. The Illinois Supreme Court has also said that this subsection does not prevent courts from fashioning remedies in suits against the state, even though that might require spending state funds.[16] However, the state is not usually subject to suits in state courts, except in the Court of Claims under restrictions set forth in the Court of Claims Act.[17]

(c) Reports and records of the obligation, receipt and use of public funds of the State, units of local government and school districts are public records available for inspection by the public according to law.

The Freedom of Information Act provides detailed procedures for obtaining public information, including inspecting and copying it.[18] Illinois Appellate Court decisions under older laws held that a special district could be required to provide information on the names and salaries of all its employees in a given year,[19] and that a local housing authority could be required to give a television station a list of landlords and addresses involved in a subsidized housing program.[20]

SECTION 2. STATE FINANCE

(a) The Governor shall prepare and submit to the General Assembly, at a time prescribed by law, a State budget for the ensuing fiscal year. The budget shall set forth the estimated balance of funds available for appropriation at the beginning of the fiscal year, the estimated receipts, and a plan for expenditures and obligations during the fiscal year of every department, authority, public corporation and quasi-public corporation of the State, every State college and university, and every other public agency created by the State, but not of units of local government or school districts. The budget shall also set forth the indebtedness and contingent liabilities of the State and such other information as may be required by law. Proposed expenditures shall not exceed funds estimated to be available for the fiscal year as shown in the budget.

In Illinois the executive branch is primarily responsible for preparing a comprehensive budget proposal, which by law is to be sent to the General Assembly each year by the third Wednesday in February.[21] The requirement of an annual budget was new in the 1970 Constitution, along with the specification of some components of that budget. A statute requires further details in the budget proposal.[22] Revenue estimates for the coming fiscal year are made by the Bureau of the Budget for purposes of the balanced-budget requirement.[23]

As mentioned under section 1, the Illinois Supreme Court has said that this section does not prohibit appropriations that are continuing or otherwise cover more than one fiscal year.[24] But the Attorney General has advised that this section does preclude making the entire appropriations process biennial.[25] The Illinois Supreme Court has upheld the statutory system under which the Illinois State Toll Highway Authority holds its revenues in a special fund and disburses them as authorized by statute.[26]

(b) The General Assembly by law shall make appropriations for all expenditures of public funds by the State. Appropriations for a fiscal year shall not exceed funds estimated by the General Assembly to be available during that year.

This provision does not mean as much as it may appear to. A number of kinds of public funds are spent without current appropriations by the General Assembly.[27] But there must be some state or federal law authorizing such expenditures, or at least a court order, to comply with the prohibition in subsection 1(b) on payments from public funds that are not authorized by law. Several laws authorize specific state agencies to receive, hold, and spend federal funds for the uses for which they were distributed to the state.[28]

The Illinois Supreme Court has held invalid a law providing that the Director of Public Aid and the Governor could transfer funds, already appropriated, among the major categorical programs administered by the Department of Public Aid. The court said this was an unconstitutional delegation of the General Assembly's appropriation power to the executive branch.[29]

SECTION 3. STATE AUDIT AND AUDITOR GENERAL

(a) The General Assembly shall provide by law for the audit of the obligation, receipt and use of public funds of the State. The General Assembly, by a vote of three-fifths of the members elected to each house, shall appoint an Auditor General and may remove him for cause by a similar vote. The Auditor General shall serve for a term of ten years. His compensation shall be established by law and shall not be diminished, but may be increased, to take effect during his term.

(b) The Auditor General shall conduct the audit of public funds of the State. He shall make additional reports and investigations as directed by the General Assembly. He shall report his findings and recommendations to the General Assembly and to the Governor.

By providing for the post-audit of all public funds of the state by a legislatively appointed officer, the Constitution gave the General Assembly the tools to ensure that public funds are being spent as it directs. These provisions were an indirect result of a scandal in the 1950s in which the elected Auditor of Public Accounts was discovered to be embezzling large amounts of state money. The Revenue and Finance Committee proposal at the 1970 constitutional convention said this about the new office of Auditor General:

> The Committee believes that this position should be filled by a person of integrity and ability, who should enjoy the security of long tenure in order to assure his independence and freedom of action. For this reason, [the proposal] provides a long term of office and requires an extraordinary vote for appointment.[30]

The General Assembly implemented this section by enacting the Illinois State Auditing Act.[31] It authorizes the Auditor General to make post-audits and investigations of all state agencies (a term defined to include almost all legislative, executive, and judicial agencies of the state), and requires those agencies to make all their financial records available at the Auditor General's request.[32] The Act also authorizes the Auditor General to audit a federally funded program or activity if the federal government will pay for the audit or the Legislative Audit Commission approves.[33]

The Illinois Supreme Court for several years refused to allow the Auditor General to audit the records of agencies the court had created to supervise licensing and discipline of lawyers.[34] The Auditor General argued that these agencies' funds are "public funds" within the meaning of the Constitution, because they are collected by public agencies using compulsion. The court on the other hand said funds spent by these agencies are not public funds, and that the separation of powers protected the agencies from application of the auditing requirement of this section. In a 1982 opinion, the Attorney General agreed with the Auditor General's position.[35] More recently, the Illinois Supreme Court has allowed the Auditor General to audit some of the agencies involved.[36]

The Legislative Audit Commission receives reports by the Auditor General and may recommend remedial measures if they show deficiencies in the activities of state agencies. The Commission also can direct the Auditor General to undertake related studies and investigations.[37]

SECTION 4. SYSTEMS OF ACCOUNTING, AUDITING AND REPORTING

The General Assembly by law shall provide systems of accounting, auditing and reporting of the obligation, receipt and use of public funds. These systems shall be used by all units of local government and school districts.

The Local Government Accounting Systems Act authorizes the Comptroller to establish "advisory guidelines" for accounting systems, to be available to all local governments that are not audited by the Auditor General. Such systems would, to the extent practicable, follow Generally Accepted Accounting Principles (GAAP).[38] The Comptroller has not issued such guidelines by regulation, but does require financial reports from local governments (if state law requires them to be sent to the state) to use a standard form. Statutes provide for auditing of municipalities,[39] counties,[40] and some other kinds of local governments.[41]

Article 9. Revenue

SECTION 1. STATE REVENUE POWER

The General Assembly has the exclusive power to raise revenue by law except as limited or otherwise provided in this Constitution. The power of taxation shall not be surrendered, suspended, or contracted away.

This section describes the General Assembly's power of taxation in the broadest possible terms. It includes the power to raise revenue through taxation in any manner not specifically prohibited by the Illinois or U.S. Constitution.[1] But some taxing powers for local governments are "otherwise provided in this Constitution" in Article 7, sections 6 and 7.

The second sentence prohibits the state from making agreements with private entities to release them from tax liability. It does not prevent the General Assembly from transferring additional taxing powers to local governments. The Illinois Supreme Court has held that this section was not violated by a law authorizing the Regional Transportation Authority to collect taxes on motor fuel and parking, and allocating part of the state's motor vehicle registration fees collected in Chicago to the RTA.[2] The court also held that this section helped support a law requiring Chicago, a home-rule city, to levy taxes as required by a state-created board to rescue its schools from a financial crisis.[3]

SECTION 2. NON-PROPERTY TAXES—CLASSIFICATION, EXEMPTIONS, DEDUCTIONS, ALLOWANCES AND CREDITS

In any law classifying the subjects or objects of non-property taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly. Exemptions, deductions, credits, refunds and other allowances shall be reasonable.

These two sentences impose general restrictions on taxes other than property taxes. The state and local governments are authorized to impose a variety of such taxes. But if government divides taxpayers into classes with different rates by class, the classes must be logical and all persons or situations within each class must be taxed at a uniform rate. On the other hand, the second sentence allows "reasonable" exemptions from such taxes. This permits, for example, lower taxes on the sale of food and drugs, and personal exemptions from the income tax.

The Illinois Supreme Court has decided a number of cases under the 1970 Constitution on the reasonableness of tax laws with different rates based on rather minor differences in the persons or things taxed. It upheld the following taxes:

- Chicago's "wheel tax" on automobiles, with lower rates for cars with small or mid-sized engines than those with large engines.[4]
- Chicago's tax on employment of persons, at a flat rate per employee per month, applying only to employers of 15 or more persons.[5]
- A state tax on cigarettes, allowing distributors to keep a "discount" to reimburse the cost of collection, with the discount per case larger for the first $700,000 a distributor handled per year than for amounts beyond that sum.[6]
- A Chicago "transaction tax" on (1) on the sale of real property, with lower rates for nonresidents of the city than for residents, and (2) the lease or rental of personal property, not applying to all personal property.[7]

- A Chicago tax on the transmission of messages, which exempted interstate transmissions.[8]
- A Regional Transportation Authority tax on sales in its six-county area, at rates of 1% in Cook County and ¼% elsewhere.[9]
- A Chicago sales tax to fund construction of a new convention center, applying only to food bought at restaurants or otherwise for immediate consumption and only within a limited area around the convention center.[10]

An Illinois Appellate Court decision upheld an Illinois Income Tax Act provision taxing capital gains that accrued before the Act took effect if they were received by corporations, but not if they were received by other taxpayers.[11]

On the other hand, under a similar provision in the 1870 Illinois Constitution, the Illinois Supreme Court struck down a "service occupation tax" law that taxed providers of some kinds of services but not providers of other services, and taxed service providers only if they conveyed an item or items of personal property along with the service.[12] More recently, the Supreme Court has held that the following violated the 1970 Constitution:

- A Chicago service tax ordinance. The court said it was invalid not only because it violated Article 7, subsection 6(e), but also because it exempted securities and commodities dealers—who the court said provided similar and in some cases the same services as those provided by businesses the ordinance did tax.[13]
- An Illinois Department of Revenue ruling that taxed makers and distributors of beverages made by diluting distilled alcohol at higher rates than makers and distributors of "wine coolers" made by fermentation without distillation, when the two kinds of products had similar alcohol levels. The court said there was no "real and substantial difference" between the two types of products, so the classification was unreasonable.[14]

SECTION 3. LIMITATIONS ON INCOME TAXATION

> **(a) A tax on or measured by income shall be at a non-graduated rate. At any one time there may be no more than one such tax imposed by the State for State purposes on individuals and one such tax so imposed on corporations. In any such tax imposed upon corporations the rate shall not exceed the rate imposed on individuals by more than a ratio of 8 to 5.**

This subsection authorizes one state income tax on individuals and one on corporations, each using a flat rate rather than graduated rates. Due to fears that political pressure might push the corporate income tax to destructive levels, the ratio by which the corporate income tax rate can exceed the individual income tax rate is not allowed to exceed 8-to-5. But subsection 5(c) allows an additional tax on corporations, to replace the personal property tax on corporations, which can cause the total corporate income tax rate to exceed the 8-5 ratio. Under Article 7, subsection 6(e)(2) and sections 7 and 8, local governments can impose income taxes only if the General Assembly authorizes them to do so, which it has not done.

> **(b) Laws imposing taxes on or measured by income may adopt by reference provisions of the laws and regulations of the United States, as they then exist or thereafter may be changed, for the purpose of arriving at the amount of income upon which the tax is imposed.**

Illinois bases most of the numbers used for calculating state income tax liability on those calculated for federal income tax purposes (such as adjusted gross income). But an Illinois Appellate Court decision points out that the state need not adopt the federal provisions

completely. The authority in this section is merely for convenience, and does not require the state to follow any tax policies set by Congress.[15]

SECTION 4. REAL PROPERTY TAXATION

(a) Except as otherwise provided in this Section, taxes upon real property shall be levied uniformly by valuation ascertained as the General Assembly shall provide by law.

(b) Subject to such limitations as the General Assembly may hereafter prescribe by law, counties with a population of more than 200,000 may classify or continue to classify real property for purposes of taxation. Any such classification shall be reasonable and assessments shall be uniform within each class. The level of assessment or rate of tax of the highest class in a county shall not exceed two and one-half times the level of assessment or rate of tax of the lowest class in that county. Real property used in farming in a county shall not be assessed at a higher level of assessment than single family residential real property in that county.

(c) Any depreciation in the value of real estate occasioned by a public easement may be deducted in assessing such property.

These provisions attempt to deal with the difficult problem of fairness in real property taxation. The general rule of uniformity set forth in subsection 4(a) is modified by the authority given in subsection 4(b) to counties of over 200,000 to divide real property into classes with differing assessment levels. Subsection 4(b) attempts to limit any unfairness in such classification by making it subject to limitation by the General Assembly, and by restricting the ratio between the highest and lowest assessment levels to 2½-to-1. The Illinois Supreme Court has held that this authority to classify does not violate the U.S. Constitution and did not require an enabling law.[16] But the General Assembly later enacted a law providing that any such classification, to be effective, must be established by county ordinance.[17] At present only Cook County classifies property for taxation.

The Illinois Supreme Court has also interpreted this Article 9 as impliedly authorizing the General Assembly to make reasonable classifications of real property for tax purposes. The court in that case upheld a law that limited the increases in assessed valuation of land used for farming.[18]

Individual taxpayers have on occasion been able to convince courts that their properties were assessed so far above the prevailing percentage of market value as to violate this section's requirement of uniformity.[19]

SECTION 5. PERSONAL PROPERTY TAXATION

(a) The General Assembly by law may classify personal property for purposes of taxation by valuation, abolish such taxes on any or all classes and authorize the levy of taxes in lieu of the taxation of personal property by valuation.

(b) Any ad valorem personal property tax abolished on or before the effective date of this Constitution shall not be reinstated.

These two subsections have no further effect because of the abolition of personal property taxation by the next subsection.

(c) On or before January 1, l979, the General Assembly by law shall abolish all ad valorem personal property taxes and concurrently therewith and thereafter shall replace all revenue loss by units of local government and school districts as a result of

the abolition of ad valorem personal property taxes subsequent to January 2, l971. Such revenue shall be replaced by imposing statewide taxes, other than ad valorem taxes on real estate, solely on those classes relieved of the burden of paying ad valorem personal property taxes because of the abolition of such taxes subsequent to January 2, l971. If any taxes imposed for such replacement purposes are taxes on or measured by income, such replacement taxes shall not be considered for purposes of the limitations of one tax and the ratio of 8 to 5 set forth in Section 3(a) of this Article.

Just before ratification of the 1970 Constitution, the voters in November 1970 approved an amendment to the old (1870) Constitution, abolishing the personal property tax "as to individuals" effective January 1, l971—six months before most provisions of this Constitution took effect. The General Assembly was unable to agree on a plan to abolish all remaining taxation of personal property as required by this section. However, the Illinois Supreme Court in 1979 held that this section had automatically abolished all such taxation on January 1, l979.[20] Later that year the General Assembly enacted a replacement tax act[21] which the Illinois Supreme Court upheld.[22] Its most important feature was adding 2.85% (falling to 2.5% in 1981) to the corporate income tax rate. The court held that this was permitted by this section's last sentence, which says personal property tax replacement taxes do not count toward the 8-5 ratio limitation on the corporate income tax set forth in section 3. The revenue from this extra rate, and revenue from other taxes imposed by the 1979 law, are distributed to local taxing units under a statutory formula.[23]

The Illinois Supreme Court has upheld the Mobile Home Local Services Tax Act, with rates varying by the number of square feet in each structure.[24] The court held that even if this is a personal property tax, it is constitutional because it is not an *ad valorem* personal property tax—one based on an assessment of the monetary value of property.[25]

SECTION 6. EXEMPTIONS FROM PROPERTY TAXATION

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes. The General Assembly by law may grant homestead exemptions or rent credits.

Illinois court decisions require that to qualify for a tax exemption, property must be both owned by a tax-exempt organization and used exclusively for exempt purposes.[26] If land is to be exempt from taxation as government property, a governmental entity must ordinarily own the land itself; ownership of buildings on the land is not enough.[27] The courts also construe narrowly the permitted grounds for exemption. For example, they have refused to allow charitable tax exemptions to homes for the aged if residents must pay substantial monthly fees and meet the homes' standards for health to stay.[28] And the courts refused to allow exemptions, as "property used exclusively for agricultural and horticultural societies," of real property used by a grange (a nonprofit farm-related organization)[29] or an organization holding an annual reunion to display old-time threshing equipment and skills.[30]

On the other hand, the Illinois Supreme Court upheld, under the second sentence of this section, laws granting partial homestead exemptions from taxation of residences of the elderly,[31] and of owners who use property as their principal dwelling places.[32] The Illinois Supreme Court upheld a law providing that church parsonage property used for a religious purpose could be exempted from property tax. But the court pointed out that a parsonage is not automatically eligible for an exemption; the owners must show that its primary use is religious, rather than merely providing a residence for a pastor and family.[33]

An Illinois Appellate Court case held that fraternity houses owned by colleges are exempt from property taxation.[34]

Northwestern University exemption

Despite this section, an exemption of all the property of Northwestern University from property taxation, given in its charter enacted before the 1870 Constitution, still operates because the charter is a contract that binds the state.[35] But the economic effect of Northwestern's total exemption (as to property it owns but does not use for educational purposes) has been undone by a law providing that when real estate exempt from taxation is leased to a lessee that is not exempt, the property is to be taxed as that of the lessee.[36] The Illinois Supreme Court has upheld that law.[37]

SECTION 7. OVERLAPPING TAXING DISTRICTS

The General Assembly may provide by law for fair apportionment of the burden of taxation of property situated in taxing districts that lie in more than one county.

The General Assembly has provided that when real property in a single taxing district is assessed at different percentages of market value by assessors for different counties within the district, the Department of Revenue at the request of an assessing official or at least 25 interested taxpayers is to equalize the burden of taxation at a uniform percentage of market value.[38] Even without application of that law, the Illinois Supreme Court in a 1974 case upheld objections to real estate taxes based on different percentage assessment levels in different counties containing parts of the same school district.[39]

SECTION 8. TAX SALES

(a) Real property shall not be sold for the non-payment of taxes or special assessments without judicial proceedings.

(b) The right of redemption from all sales of real estate for the non-payment of taxes or special assessments, except as provided in subsections (c) and (d), shall exist in favor of owners and persons interested in such real estate for not less than 2 years following such sales.

(c) The right of redemption from the sale for nonpayment of taxes or special assessments of a parcel of real estate which: (1) is vacant non-farm real estate or (2) contains an improvement consisting of a structure or structures each of which contains 7 or more residential units or (3) is commercial or industrial property; shall exist in favor of owners and persons interested in such real estate for not less than one year following such sales.

(d) The right of redemption from the sale for non-payment of taxes or special assessments of a parcel [of] real estate which: (1) is vacant non-farm real estate or (2) contains an improvement consisting of a structure or structures each of which contains 7 or more residential units or (3) is commercial or industrial property; and upon which all or a part of the general taxes for each of 2 or more years are delinquent shall exist in favor of owners and persons interested in such real estate for not less than 6 months following such sales.

(e) Owners, occupants and parties interested shall be given reasonable notice of the sale and the date of expiration of the period of redemption as the General Assembly provides by law.

This section governs the sale of real property due to nonpayment of taxes on it, and its "redemption" if the owner, within a specified time, pays all taxes and charges owed. An amendment to this section, approved by the voters in November 1980, reduced the minimum time during which redemptions must be allowed on some kinds of property with commercial value from 2 years to 90 days.[40] A second constitutional amendment, approved by the voters in November 1990,[41] subdivided the kinds of property with a shorter redemption period into two groups, depending on how long taxes on them have been delinquent. For such property on which taxes have been delinquent for at least 2 years, the redemption period is now 6 months. For such property on which taxes have been delinquent for less than 2 years, the redemption period is one year.

SECTION 9. STATE DEBT

(a) No State debt shall be incurred except as provided in this Section. For the purpose of this Section, "State debt" means bonds or other evidences of indebtedness which are secured by the full faith and credit of the State or are required to be repaid, directly or indirectly, from tax revenue and which are incurred by the State, any department, authority, public corporation or quasi-public corporation of the State, any State college or university, or any other public agency created by the State, but not by units of local government, or school districts.

(b) State debt for specific purposes may be incurred or the payment of State or other debt guaranteed in such amounts as may be provided either in a law passed by the vote of three-fifths of the members elected to each house of the General Assembly or in a law approved by a majority of the electors voting on the question at the next general election following passage. Any law providing for the incurring or guaranteeing of debt shall set forth the specific purposes and the manner of repayment.

Under the 1870 Constitution, state debt totaling over $250,000 was prohibited unless approved in a referendum by a majority of the persons voting for state legislators.[42] To avoid that antiquated dollar limit, the General Assembly often created semi-independent "authorities" such as the Illinois Building Authority, which borrowed money in their own names to construct state buildings and then charged the state rent to pay off the debts. To make such devices unnecessary, the 1970 Constitution allows debts that bind the state directly if they are approved by either three-fifths of each legislative house or a majority of voters voting on the question. Debts that are to be paid only from user fees or other non-tax sources do not need such approval. The Illinois Supreme Court has interpreted these provisions rather liberally in favor of debt, holding that the Regional Transportation Authority Act did not create state debt even though the state pledged to allocate part of certain tax revenues to repay RTA bonds.[43] The court pointed out that the state did not pledge to pay however much the RTA would need to pay off the bonds, or to back up the bonds if the Authority defaulted on them.

(c) State debt in anticipation of revenues to be collected in a fiscal year may be incurred by law in an amount not exceeding 5% of the State's appropriations for that fiscal year. Such debt shall be retired from the revenues realized in that fiscal year.

(d) State debt may be incurred by law in an amount not exceeding 15% of the State's appropriations for that fiscal year to meet deficits caused by emergencies or failures of revenue. Such law shall provide that the debt be repaid within one year of the date it is incurred.

The Short Term Borrowing Act authorizes the Governor, Comptroller, and Treasurer together to borrow up to 5% of the amount of state appropriations to smooth imbalances occurring during a fiscal year. Such debt must be repaid by the end of that fiscal year.[44] The

Act also authorizes those three officials to borrow up to 15% of the amount appropriated for a fiscal year, which need not be repaid for 12 months. But that provision can be used only after giving the Clerk of the House, Secretary of the Senate, and Secretary of State 30 days' written notice along with recommendations for corrective action to restore the state's fiscal soundness.[45]

(e) State debt may be incurred by law to refund outstanding State debt if the refunding debt matures within the term of the outstanding State debt.

(f) The State, departments, authorities, public corporations and quasi-public corporations of the State, the State colleges and universities and other public agencies created by the State, may issue bonds or other evidences of indebtedness which are not secured by the full faith and credit or tax revenue of the State nor required to be repaid, directly or indirectly, from tax revenue, for such purposes and in such amounts as may be authorized by law.

Refunding bonds and revenue bonds (which will be paid off only if the issuing agency receives sufficient non-tax revenues) may be authorized by a law passed by a simple majority of the members elected to each house of the General Assembly.

SECTION 10. REVENUE ARTICLE NOT LIMITED

This Article is not qualified or limited by the provisions of Article VII of this Constitution concerning the size of the majorities in the General Assembly necessary to deny or limit the power to tax granted to units of local government.

Under this section, powers given to the General Assembly by this article, such as the power in subsection 4(b) to put limits on the classification of real property by counties over 200,000, apparently can be exercised by a majority of the members elected even if they affect home-rule taxing powers.

Article 10. Education

The Education Article replaced the old Superintendent of Public Instruction with a State Board of Education, whose members are appointed by the Governor from around the state. It also strengthened the state's commitment to tax-paid education through high school, and continued the 1870 Constitution's prohibition on use of public funds for religious instruction.

SECTION 1. GOAL—FREE SCHOOLS

A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities.

The State shall provide for an efficient system of high quality public educational institutions and services. Education in public schools through the secondary level shall be free. There may be such other free education as the General Assembly provides by law.

The State has the primary responsibility for financing the system of public education.

As its title suggests, this section is largely hortatory rather than establishing enforceable standards. The Illinois Supreme Court has held that it does not require that any specific kind of education be provided, such as special education for students who are alleged to need it.[1] But a later Appellate Court decision held that what special education the state does provide must be free; parents cannot be required to pay part of the cost of special education for their children even in private schools, if the state or the local school system has sent them there because it lacks the facilities to educate them itself.[2]

The Illinois Supreme Court has held that this section's requirement of free elementary and secondary schools applies only to tuition charges; a school district may charge parents for workbooks, maps, and other items (not including textbooks if provided free under statutory authority).[3]

The Illinois Supreme Court in 1973 held that the state's "primary responsibility" for education does not require the state to provide at least half of school funding.[4] The Illinois Supreme Court in 1996 rejected a more broadly-based challenge to the Illinois public school financing system.[5] The Illinois Supreme Court has held that this section does not restrict the General Assembly from cutting state aid to districts that fail to meet state requirements for number of school days in a year.[6]

An Illinois Appellate Court decision, citing cases under the 1870 Constitution, has held that community colleges are not part of the school system called for in this section.[7]

SECTION 2. STATE BOARD OF EDUCATION—CHIEF STATE EDUCATIONAL OFFICER

(a) There is created a State Board of Education to be elected or selected on a regional basis. The number of members, their qualifications, terms of office and manner of election or selection shall be provided by law. The Board, except as limited by law, may establish goals, determine policies, provide for planning and evaluating education programs and recommend financing. The Board shall have such other duties and powers as provided by law.

(b) The State Board of Education shall appoint a chief state educational officer.

The General Assembly has provided by law for the State Board of Education to have nine members appointed by the Governor with Senate confirmation, chosen as follows: one each from Chicago and suburban Cook County; two from the "collar-county" area; two from Downstate; and three at-large members (one of whom is to chair the Board).[8] The "chief state educational officer" mentioned here is the State Superintendent of Education.

SECTION 3. PUBLIC FUNDS FOR SECTARIAN PURPOSES FORBIDDEN

> **Neither the General Assembly nor any county, city, town, township, school district, or other public corporation, shall ever make any appropriation or pay from any public fund whatever, anything in aid of any church or sectarian purpose, or to help support or sustain any school, academy, seminary, college, university, or other literary or scientific institution, controlled by any church or sectarian denomination whatever; nor shall any grant or donation of land, money, or other personal property ever be made by the State, or any such public corporation, to any church, or for any sectarian purpose.**

This section was taken verbatim from the 1870 Constitution. The Illinois Supreme Court has said that if a law is valid under the part of the First Amendment to the U.S. Constitution prohibiting government establishment of religion, it will also be valid under this section.[9] In 1910 the Illinois Supreme Court held that Bible reading in public schools violated this section in the 1870 Constitution,[10] preceding by more than 50 years a similar holding by the U.S. Supreme Court under the First Amendment.[11] More recently, the Illinois Supreme Court held unconstitutional statutory provisions for annual grants to parents of private-school students and for paying the costs of textbooks and related services.[12] On the other hand, the court upheld a law requiring public school districts to provide, with some exceptions, transportation along regular bus routes to private-school students.[13] This was viewed more as a measure to protect students from weather and traffic than as aid to their schools. Also, a 2001 Illinois Appellate Court decision (which the Illinois Supreme Court declined to review) upheld a law allowing tax credits to parents for some of the costs of sending their children to either public or private (including religious-affiliated) schools, on the grounds that it was not an appropriation of public funds and that it served a public purpose.[14]

The Illinois Supreme Court has upheld the issuance of tax-free state bonds to construct a building for secular use at a religiously affiliated college. But the court held that local governments could not invest in those bonds, since that would be lending public credit to a religious institution.[15]

Article 11. Environment

The Environment Article, new in the 1970 Constitution, attempts to guarantee both the state and its residents powers to protect the environment. Its potential for individual enforcement has been neglected, perhaps due to state enforcement and the practical difficulties facing individuals seeking to fight pollution.

SECTION 1. PUBLIC POLICY—LEGISLATIVE RESPONSIBILITY

> **The public policy of the State and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The General Assembly shall provide by law for the implementation and enforcement of this public policy.**

The General Assembly has enacted several laws to protect the environment. The most important, the Environmental Protection Act,[1] was enacted in 1970 while the constitutional convention met. Others deal with more specific topics such as disposal and recycling of solid waste;[2] protection of groundwater;[3] reclamation of land used for strip mining;[4] regulation of use of land for treating wastewater;[5] and regulation of the use of pesticides and lawn-care products.[6]

SECTION 2. RIGHTS OF INDIVIDUALS

> **Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law.**

The committee that proposed this article at the constitutional convention said it considered this section's second sentence to be the "heart" of the article.[7] It was intended to abolish the judicial requirement of "special injury" for standing in environmental suits.[8] That requirement said that to be heard in court against an alleged polluter, a person must show an injury that is different from or greater than the harm to the general public. The committee said that if, for example, a town's air is being polluted by industry, any citizen of the town should be able to sue on behalf of all of them to stop the pollution.[9]

However, in practice this section appears to have had no effect. A 1974 Illinois Appellate Court decision held that private citizens could not block a joint federal-state project on the Embarras River that they argued would harm the environment. The court said that "the alleged causal connection between the destroying of the habitat of the game and wildlife to be hunted and the right to a healthful environment is too remote to warrant the relief sought."[10] The Illinois Supreme Court in a 1995 case gave this section a similarly narrow interpretation, saying that its only purpose was to abolish the "special injury" requirement and that plaintiffs suing to stop actions alleged to harm the environment must still show that they have a "cognizable cause of action" to sue.[11] The court similarly refused in 1999 to allow an individual to sue a city under this section to block its construction of a dam and reservoir on a creek.[12]

However, individuals have been successful in fighting pollution by filing complaints with the Pollution Control Board as authorized by the Environmental Protection Act.[13] The private right of action guaranteed by this section may have some value as a 'safety valve' for use if agencies charged with protecting the environment fail to do so.

Article 12. Militia

This article provides for a state militia with little change from the 1870 Constitution, except for including all able-bodied persons in the state as members of the militia (rather than only able-bodied men aged 18 to 45). The committee that proposed it at the constitutional convention said that inclusion of a militia article in the new Constitution was intended to express the state's right of self-preservation and "to add integrity to the concept of the state as a separate governmental entity within the federal system."[1] However, the role of states in controlling their militias has been reduced by the National Defense Act of 1916, which established the National Guard as the official organized militia of the United States, under the general supervision of the national government.[2]

SECTION 1. MEMBERSHIP

The State militia consists of all able-bodied persons residing in the State except those exempted by law.

The "militia" described here includes both the state's organized militia who have received military training, and its unorganized militia—composed of all other able-bodied persons who are not exempt.[3] The corresponding provision in the 1870 Constitution was narrower, including in the unorganized militia only able-bodied men aged 18 to 45.[4]

SECTION 2. SUBORDINATION OF MILITARY POWER

The military shall be in strict subordination to the civil power.

This provision was taken from the Bill of Rights of the 1870 Constitution. It states a fundamental principle of a democratic society.

SECTION 3. ORGANIZATION, EQUIPMENT AND DISCIPLINE

The General Assembly shall provide by law for the organization, equipment and discipline of the militia in conformity with the laws governing the armed forces of the United States.

The national government exercises general supervision over state militias, which are now part of the National Guard.[5]

SECTION 4. COMMANDER-IN-CHIEF AND OFFICERS

(a) The Governor is commander-in-chief of the organized militia, except when they are in the service of the United States. He may call them out to enforce the laws, suppress insurrection or repel invasion.

(b) The Governor shall commission militia officers who shall hold their commissions for such time as may be provided by law.

SECTION 5. PRIVILEGE FROM ARREST

Except in cases of treason, felony or breach of peace, persons going to, returning from or on militia duty are privileged from arrest.

There is a similar provision for state legislators in Article 4, section 12, first sentence. Presumably this provision, like that one, applies only to "civil arrest" rather than arrest for violating a criminal law or ordinance.

Article 13. General Provisions

Article 13 is a potpourri of provisions that did not fit comfortably into any other article of the 1970 Constitution. Perhaps its most important sections are those requiring statements of economic interests by public officers, and guaranteeing pension rights of public employees.

SECTION 1. DISQUALIFICATION FOR PUBLIC OFFICE

> **A person convicted of a felony, bribery, perjury or other infamous crime shall be ineligible to hold an office created by this Constitution. Eligibility may be restored as provided by law.**

The intent of this section is clear—to prevent those who have shown a serious lack of trustworthiness from participating in making public decisions. But its application is unclear in some respects. "Infamous crimes" are not precisely defined. The Illinois Supreme Court in a case under a similar provision in the 1870 Constitution commented that a felony is infamous "if it is inconsistent with commonly accepted principles of honesty and decency, or involves moral turpitude."[1] But this section applies to *all* felonies, and to other infamous crimes as well. It has been held to apply to crimes against the laws of the United States or of other states, as well as Illinois crimes.[2]

The Election Code says a person convicted of an infamous crime as defined in another law (later repealed) is prohibited from holding any office of trust or profit unless eligibility is restored by a pardon "or otherwise according to law."[3] But provisions in the Unified Code of Corrections imply that eligibility to hold public office is automatically restored upon completion of a prison sentence.[4] A panel of the Illinois Appellate Court in 1980 found a denial of equal protection in different standards established by these two laws, and held that a local official who had been convicted of extortion could run for office after serving his sentence.[5] That decision was not appealed.

In an earlier case under the 1870 Constitution, an Illinois Appellate Court panel held that the Governor's pardoning power included the power to restore a federal felon to rights of citizenship given by the state, including the right to hold public office.[6] This decision also was not appealed. These cases leave some uncertainty about the exact scope of the disqualification from public office after conviction.

SECTION 2. STATEMENT OF ECONOMIC INTERESTS

> **All candidates for or holders of state offices and all members of a Commission or Board created by this Constitution shall file a verified statement of their economic interests, as provided by law. The General Assembly by law may impose a similar requirement upon candidates for, or holders of, offices in units of local government and school districts. Statements shall be filed annually with the Secretary of State and shall be available for inspection by the public. The General Assembly by law shall prescribe a reasonable time for filing the statement. Failure to file a statement within the time prescribed shall result in ineligibility for, or forfeiture of, office. This Section shall not be construed as limiting the authority of any branch of government to establish and enforce ethical standards for that branch.**

Governmental Ethics Act

The Illinois Governmental Ethics Act implements this section. It requires annual economic disclosure statements from all holders of or candidates for elected state executive,

legislative, or judicial offices; appointive offices subject to Senate confirmation; and memberships on boards or commissions created by the Constitution.[7] The Act also requires such statements from nonteaching state employees who have discretion in exercising governmental powers; from candidates for or holders of most elective or appointive offices in local governments, school and community college districts, and zoning or planning boards; and from local government and school employees who have discretion in exercising governmental powers. The Illinois Supreme Court has held that the General Assembly has power to require disclosure statements from such classes of officers and employees.[8]

The Illinois Supreme Court in another case under the Act held that a candidate should not be disqualified due to a merely inadvertent inaccuracy or omission in a statement of economic interests. The court noted that the Act disqualifies a candidate who completely *fails* to file a statement within the time allowed, and imposes penalties on a candidate who *willfully* files a false or incomplete statement.[9]

Other ethical and reporting requirements

The Illinois Supreme Court upheld a 1973 Governor's executive order placing similar disclosure requirements on persons appointed by the Governor and some persons employed under him.[10] But the court struck down a provision in the order saying persons doing business with the state must file economic disclosure statements, holding that the Governor had no authority to impose such requirements on persons not in the executive branch.[11]

In addition to the constitutional and statutory requirements on judges, Illinois Supreme Court rules establish ethical standards which the Courts Commission may enforce.[12] See the discussion under Article 6, section 15.

The State Officials and Employees Ethics Act,[13] enacted in 2003, imposes numerous additional requirements intended to protect the integrity of government service.

SECTION 3. OATH OR AFFIRMATION OF OFFICE

> **Each prospective holder of a State office or other State position created by this Constitution, before taking office, shall take and subscribe to the following oath or affirmation:**
>
> **"I do solemnly swear (affirm) that I will support the Constitution of the United States, and the Constitution of the State of Illinois, and that I will faithfully discharge the duties of the office of . . . to the best of my ability."**

Two separate oath provisions in the 1870 Constitution were combined into this general oath requirement, which applies to all prospective holders of constitutionally created state offices or positions. Prospective holders of other positions need not take this oath, but may be required by law to take a different one.[14]

SECTION 4. SOVEREIGN IMMUNITY ABOLISHED

> **Except as the General Assembly may provide by law, sovereign immunity in this State is abolished.**

The doctrine of sovereign immunity, which originated in English common law, prohibits suits against a government without its consent. This doctrine has been heavily criticized in modern times, and many states have limited or abolished it. In 1959 the Illinois Supreme Court judicially abolished sovereign immunity as to school districts; later decisions applied the abolition to other kinds of local governments.[15]

A provision in the old (1870) Constitution guaranteed the sovereign immunity of the state.[16] But the General Assembly had long provided an administrative agency, first called

the Commission on Claims and later the Court of Claims, to hear claims against the state and recommend payment of just claims by the General Assembly.[17]

The committee that proposed this section at the 1970 constitutional convention wanted to give the General Assembly freedom to decide whether the state would be liable to suit; but it decided to put the burden on the General Assembly to determine the conditions in which such suits would be heard.[18] The General Assembly chose to continue the state's immunity from suit, except suits in the Court of Claims and suits under the Illinois Public Labor Relations Act.[19] Under the Court of Claims Act, the maximum award in tort cases (except those arising from operating state vehicles) is $100,000.[20]

Whether a suit is against the state depends not on who is named as a defendant in the complaint, but on whether the state will be directly and adversely affected by an unfavorable judgment—and thus is a "real party in interest."[21] But the Illinois Supreme Court has said that a suit is not against the state if it "contests the conduct of State officials in the enforcement of an allegedly unconstitutional law and in allegedly proceeding in violation of law,"[22] making the determination whether to file suit in a circuit court or the Court of Claims difficult in some cases. The Illinois Supreme Court held that sovereign immunity and public official's immunity did not bar a judgment against a state police officer for negligently operating a police car while traveling to the scene of a reported disturbance that was not within his primary responsibility to patrol major highways. The court said that if a state employee is negligent by violating a duty that arises independently of state employment (in this case, the duty to drive with due care when not pursuing a suspect), the suit is not against the state and the employee may be liable like any other person.[23]

The U.S. Court of Appeals in Chicago has held that this section did not waive the state's immunity from suit in federal courts under the Eleventh Amendment to the U.S. Constitution.[24]

Laws on state and local liability

Liability of local governments and their employees for torts (civil legal wrongs) is governed by the Local Governmental and Governmental Employees Tort Immunity Act.[25] It restricts the grounds on which and the time during which suits may be brought against them. Another law exempts the state, local governments, and school districts from complying with assignments of their employees' wages to pay creditors.[26] The Illinois Supreme Court has held that the state is not immune from a suit by a third person to garnish wages the state owes an employee.[27] But an Illinois Appellate Court decision implies that this is of little value to one who is owed money by a state employee, because the constitutional courts (those created by Article 6) cannot impose a money judgment on the state in such cases.[28]

A 1982 Illinois Appellate Court decision held that a home-rule city could not prohibit garnishment actions against it, since the court considered that to be an attempt by the city to assert sovereign immunity. The court noted that this section begins "Except as the General Assembly may provide by law, . . ." rather than "Except as the General Assembly *and other legislative bodies* may provide . . . ," indicating that home rule does not include power to re-establish sovereign immunity.[29] But the same district of the Appellate Court in 1992 held that a person with an unpaid judgment against a city could not seize its city hall to satisfy it. The two-judge majority cited earlier Illinois cases holding that as a matter of public policy, winners of judgments cannot seize municipal property for payment, since this could disrupt essential municipal operations and endanger lives. The court noted that a successful plaintiff has other remedies, including forcing the city to issue bonds and raise taxes to pay a judgment. But a partly different two-judge majority in the same case held that the winner of the judgment *could* seize a vacant former industrial site owned by the city to help satisfy his judgment.[30]

SECTION 5. PENSION AND RETIREMENT RIGHTS

Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an

enforceable contractual relationship, the benefits of which shall not be diminished or impaired.

Delegates at the 1970 constitutional convention proposed this section on the floor, so there is little indication of its exact intended application. The Illinois Supreme Court has held that it protects only pension rights already earned, not any right to earn more benefits by future work,[31] and does not prohibit the practice of allowing unfunded pension liabilities to increase.[32] The court has also held that this section does not invalidate provisions in the Illinois Pension Code denying pensions to public officers or employees convicted of employment-related felonies, which provisions by their terms apply only to persons who entered service after their effective dates.[33]

On the other hand, the Illinois Supreme Court held that a statutory amendment changing the salary used to calculate benefits, from that on the last day of service to the average paid in the last year of service, could not constitutionally be applied to judges who began service before the effective date of the amendment.[34] The court also held that a statutory amendment restricting the right of public employees to buy pension credit for past military service could not constitutionally be applied to employees who began service before the amendment took effect.[35]

Two Illinois Appellate Court decisions have applied this section to prevent statutory changes in benefit formulas from taking effect as to police officers who had served for a number of years and then went onto disability before the changes were enacted.[36]

Effects of revived pension restriction

Several Illinois Appellate Court cases have dealt with the following series of facts: When the 1970 Constitution took effect, a provision in the workers' compensation law required that public pension payments to a former public employee be reduced by any workers' compensation payments to that employee.[37] In 1974 the General Assembly repealed that provision,[38] but in 1977 it enacted similar provisions in several articles of the Pension Code.[39] Most Appellate Court panels dealing with these facts have held that the 1974 repeal, followed by a public employee's continued contributions to a public pension system, vested a right in the employee to full pensions without the statutory reduction for workers' compensation payments under this section.[40] Of course, this does not give such a right to public employees who began working after re-enactment of the reduction provisions in 1977. One Appellate Court panel disagreed, holding that public employees did not have a vested interest in receiving pensions with no deduction for workers' compensation payments.[41]

SECTION 6. CORPORATIONS

Corporate charters shall be granted, amended, dissolved, or extended only pursuant to general laws.

Numerous corporations were established before 1870 with special charters granting them specific privileges. Although the 1870 Constitution ended the practice of granting such charters, a number of those corporations still exist; and due to the U.S. Constitution's prohibition on states' impairing the obligations of contracts,[42] privileges that were guaranteed in pre-1870 corporate charters cannot now be taken away. See the discussion under Article 1, section 16.

The 1870 Constitution guaranteed shareholders in corporations the right of cumulative voting for directors. Thus each shareholder could concentrate some or all votes to help elect one director, rather than voting for one candidate for each vacancy.[43] Although the present Constitution contains no such provision, section 8 of the Transition Schedule protects the

right of shareholders of pre-1971 corporations to vote cumulatively. The Illinois Supreme Court has held that this right can be abolished by the unanimous consent of a corporation's shareholders.[44]

SECTION 7. PUBLIC TRANSPORTATION

> **Public transportation is an essential public purpose for which public funds may be expended. The General Assembly by law may provide for, aid, and assist public transportation, including the granting of public funds or credit to any corporation or public authority authorized to provide public transportation within the State.**

The General Assembly presumably would have authority even without this section to provide for public transportation. But this provision ensures that public transportation will be treated as a public purpose under Article 8, subsection 1(a), for which public funds may be spent and public credit used. The General Assembly has provided for subsidized public transportation in the Transportation Bond Act[45] and the Regional Transportation Authority Act,[46] which have been upheld.[47]

SECTION 8. BRANCH BANKING

> **Branch banking shall be authorized only by law approved by three-fifths of the members voting on the question or a majority of the members elected, whichever is greater, in each house of the General Assembly.**

The 1870 Constitution contained a still more restrictive section, requiring referendum approval of any law or amendment to a law authorizing or creating banking corporations.[48] Under the current provision, branch banking can be approved by an ordinary constitutional majority, except that opponents can vote against such a bill in sufficient numbers to make "three-fifths of the members voting on the question" a higher requirement. The Illinois Supreme Court held that Chicago could not authorize branch banking under its home-rule powers.[49] But the General Assembly later allowed unlimited bank branching in Illinois.[50]

Article 14. Constitutional Revision

In addition to the previous power of the General Assembly to propose amendments to the Constitution, this article allows voters to propose amendments to change the operations of the General Assembly. This article also attempts to regulate the actions of the General Assembly in proposing or ratifying federal constitutional amendments. These new provisions have resulted in several court decisions.

SECTION 1. CONSTITUTIONAL CONVENTION

(a) Whenever three-fifths of the members elected to each house of the General Assembly so direct, the question of whether a Constitutional Convention should be called shall be submitted to the electors at the general election next occurring at least six months after such legislative direction.

(b) If the question of whether a Convention should be called is not submitted during any twenty-year period, the Secretary of State shall submit such question at the general election in the twentieth year following the last submission.

(c) The vote on whether to call a Convention shall be on a separate ballot. A Convention shall be called if approved by three-fifths of those voting on the question or a majority of those voting in the election.

(d) The General Assembly, at the session following approval by the electors, by law shall provide for the Convention and for the election of two delegates from each Legislative District; designate the time and place of the Convention's first meeting which shall be within three months after the election of delegates; fix and provide for the pay of delegates and officers; and provide for expenses necessarily incurred by the Convention.

(e) To be eligible to be a delegate a person must meet the same eligibility requirements as a member of the General Assembly. Vacancies shall be filled as provided by law.

(f) The Convention shall prepare such revision of or amendments to the Constitution as it deems necessary. Any proposed revision or amendments approved by a majority of the delegates elected shall be submitted to the electors in such manner as the Convention determines, at an election designated or called by the Convention occurring not less than two nor more than six months after the Convention's adjournment. Any revision or amendments proposed by the Convention shall be published with explanations, as the Convention provides, at least one month preceding the election.

(g) The vote on the proposed revision or amendments shall be on a separate ballot. Any proposed revision or amendments shall become effective, as the Convention provides, if approved by a majority of those voting on the question.

This article provides two methods of constitutional revision on any subject: by convention (this section) and by proposals from the General Assembly (section 2). Under subsection 1(b), the question whether to call a constitutional convention must be sent to the voters at least once every 20 years. Such a question was put to the voters in 1988 but failed.[1]

SECTION 2. AMENDMENTS BY GENERAL ASSEMBLY

(a) Amendments to this Constitution may be initiated in either house of the General Assembly. Amendments shall be read in full on three different days in each house and reproduced before the vote is taken on final passage. Amendments approved by the vote of three-fifths of the members elected to each house shall be submitted to the electors at the general election next occurring at least six months after such legislative approval, unless withdrawn by a vote of a majority of the members elected to each house.

(b) Amendments proposed by the General Assembly shall be published with explanations, as provided by law, at least one month preceding the vote thereon by the electors. The vote on the proposed amendment or amendments shall be on a separate ballot. A proposed amendment shall become effective as the amendment provides if approved by either three-fifths of those voting on the question or a majority of those voting in the election.

(c) The General Assembly shall not submit proposed amendments to more than three Articles of the Constitution at any one election. No amendment shall be proposed or submitted under this Section from the time a Convention is called until after the electors have voted on the revision or amendments, if any, proposed by such Convention.

A statute deals with various details of referenda to propose constitutional amendments.[2] The General Assembly has sent fifteen proposed amendments of the 1970 Constitution to the voters. They are summarized below.

Adopted amendments

1980: Amended Article 9, section 8 to reduce the time allowed for redemption of some kinds of real property sold for nonpayment of taxes.[3]

1982: Amended Article 1, section 9 to expand the class of suspects who can be denied bail.[4]

1986: Amended Article 1, section 9 by further expanding the class of suspects who can be denied bail.[5]

1988: Amended Article 3, section 1 to lower the minimum voting age to 18 and reduce the minimum residency requirement for voting to 30 days.[6]

1990: Amended Article 9, section 8 again, to subdivide the kinds of real property having a shorter period for redemption from taxes into two groups—one with a redemption period of 6 months, and the other with a redemption period of one year.[7]

1992: Added to Article 1 a new section 8.1 on rights of crime victims.[8]

1994: Two amendments were proposed and adopted.

(1) Amended Article 1, section 8 to remove the requirement of face-to-face confrontation in criminal trials between witnesses and defendants.[9]

(2) Amended Article 4, section 10 to change the intended legislative adjournment date from June 30 to May 31.[10]

1998: Amended Article 6, section 15 to strengthen the process for discipline of judges charged with misconduct.

In addition, as noted under section 3 below, the voters in 1980 approved an amendment to Article 4, sections 1 to 3 that was proposed by initiative petition. It reduced the size of the House and abolished cumulative voting for its members.

Rejected amendment proposals

1974: To limit the Governor's amendatory veto to changes in matters of form and correction of technical errors.[11]

1978:

(1) To eliminate the requirement in Article 9, subsection 5(c) that the General Assembly abolish all remaining taxation of personal property.[12]

(2) To exempt veterans' organizations from property tax.[13]

1984: To exempt veterans' organizations from property tax.[14]

1986: To exempt veterans' organizations from property tax and require the state to reimburse local governments for lost revenues.[15]

1988: To change redemption periods for real property sold for nonpayment of taxes.[16] (However, a nearly identical proposal was approved by the voters in 1990.)

1992: To require "equality of educational opportunity" and make the state carry the "preponderant financial responsibility for financing" public schools.[17]

SECTION 3. CONSTITUTIONAL INITIATIVE FOR LEGISLATIVE ARTICLE

> **Amendments to Article IV of this Constitution may be proposed by a petition signed by a number of electors equal in number to at least eight percent of the total votes cast for candidates for Governor in the preceding gubernatorial election. Amendments shall be limited to structural and procedural subjects contained in Article IV. A petition shall contain the text of the proposed amendment and the date of the general election at which the proposed amendment is to be submitted, shall have been signed by the petitioning electors not more than twenty-four months preceding that general election and shall be filed with the Secretary of State at least six months before that general election. The procedure for determining the validity and sufficiency of a petition shall be provided by law. If the petition is valid and sufficient, the proposed amendment shall be submitted to the electors at that general election and shall become effective if approved by either three-fifths of those voting on the amendment or a majority of those voting in the election.**

This section allows a limited constitutional revision by initiative. Proposed amendments must be restricted to "structural and procedural subjects contained in" Article 4. A proposal at the 1970 constitutional convention to allow constitutional revision by initiative without limit as to subject was defeated.[18] But the convention did decide to allow change by initiative of the General Assembly's basic structure and operations, believing that the General Assembly would be unlikely to propose such changes itself.

In a 1976 case the Illinois Supreme Court interpreted the limit of initiated amendments to "structural and procedural subjects" to mean that a proposed amendment by initiative must include *both* structural and procedural changes. The court kept off the ballot a group of proposed amendments to tighten the dual-officeholding restriction in Article 4, subsection 2(a); prohibit a legislator from voting who has a conflict of interest; and prohibit payment of salary to legislators in advance.[19] On the other hand, in 1980 the court allowed on the ballot a proposed amendment by initiative to Article 4, sections 1 to 3 to reduce the number of House seats from 177 to 118 and abolish cumulative voting for members.[20] This proposal was approved by the voters in November 1980 and took effect starting with the November 1982 election.

In 1982 the courts held that a proposed constitutional amendment by initiative, to allow voters to pass ordinary laws by initiative, was an attempt to diffuse legislative powers

rather than to change the General Assembly's structure and procedures, and thus could not go onto the ballot.[21]

In 1990 the Illinois Supreme Court refused to allow on the ballot another amendment that was proposed by initiative. It would have required a three-fifths vote in each house to pass any bill that would increase state revenues. The proposal would also have imposed some requirements on procedures of the House and Senate Revenue Committees. The court said this proposal appeared to be drafted to fit within its 1976 decision construing this section to require any proposed amendment to deal with *both* structural *and* procedural subjects. But in the 1990 case the court did not focus on the "structural and procedural" requirement, but on the requirement that any amendment proposed by initiative by "limited to . . . subjects contained in" Article 4. The court said that if it were permissible to add a three-fifths vote requirement and other provisions by initiative—thus increasing the difficulty of raising revenues—similar provisions could be used to shift the balance of power in the General Assembly on any other issue. The court said this would violate an intent of the 1970 constitutional convention that the initiative allowed by this section not be used to enact "substantive" provisions that convention delegates believed to be more fitting for statutes.[22]

Again in 1994 the Illinois Supreme Court held (although by only a 4-3 vote) that an initiative proposing to amend the Constitution could not go on the ballot. That initiative (dubbed "Eight is Enough") would have amended Article 4 to prevent anyone from serving a total of more than 8 years in the General Assembly, beginning with the General Assembly seated after its approval. The four-person court majority said the initiative proposed to change neither the structure nor the procedures of the General Assembly, and thus was not authorized by this section. The dissent argued that the court had misinterpreted the phrase "structural and procedural subjects" in the 1976 case. The dissent also repeated the court's statement in the 1990 case that the true purpose of that quoted phrase is to prevent the initiative process from being used to add to the Constitution "substantive" provisions—which the dissent said a limit on legislative terms is not.[23]

SECTION 4. AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES

> **The affirmative vote of three-fifths of the members elected to each house of the General Assembly shall be required to request Congress to call a Federal Constitutional Convention, to ratify a proposed amendment to the Constitution of the United States, or to call a State Convention to ratify a proposed amendment to the Constitution of the United States. The General Assembly shall not take action on any proposed amendment to the Constitution of the United States submitted for ratification by legislatures unless a majority of the members of the General Assembly shall have been elected after the proposed amendment has been submitted for ratification. The requirements of this Section shall govern to the extent that they are not inconsistent with requirements established by the United States.**

The 1970 constitutional convention included a requirement of a three-fifths vote in each house to ratify proposed amendments to the U.S. Constitution, so as to require the same size of majority for giving the state's assent to a federal constitutional amendment as for proposing an amendment to the state Constitution. But the Attorney General advised,[24] and a three-judge federal district court held,[25] that this supermajority requirement is not authorized by the U.S. Constitution for ratifying federal constitutional amendments, and thus does not bind the General Assembly.

The Attorney General similarly advised that this section's requirement that a majority of the members of the General Assembly have been elected after Congress proposes an amendment and before the General Assembly votes on the proposal does not bind the General Assembly.[26]

Transition Schedule

The following Schedule Provisions shall remain part of this Constitution until their terms have been executed. Once each year the Attorney General shall review the following provisions and certify to the Secretary of State which, if any, have been executed. Any provisions so certified shall thereafter be removed from the Schedule and no longer published as part of this Constitution.

SECTION 2. PROSPECTIVE OPERATION OF BILL OF RIGHTS

Any rights, procedural or substantive, created for the first time by Article I shall be prospective and not retroactive.

SECTION 4. JUDICIAL OFFICES

(a) On the effective date of this Constitution, Associate Judges and magistrates shall become Circuit Judges and Associate Judges, respectively, of their Circuit Courts. All laws and rules of court theretofore applicable to Associate Judges and magistrates shall remain in force and be applicable to the persons in their new offices until changed by the General Assembly or the Supreme Court, as the case may be.

(d) Until otherwise provided by law and except to the extent that the authority is inconsistent with Section 8 of Article VII, the Circuit Courts shall continue to exercise the non-judicial functions vested by law as of December 31, l963, in county courts or the judges thereof.

SECTION 5. LOCAL GOVERNMENT

(a) The number of members of a county board in a county which, as of the effective date of this Constitution, elects three members at large may be changed only as approved by county-wide referendum. If the number of members of such a county board is changed by county-wide referendum, the provisions of Section 3(a) of Article VII relating to the number of members of a county board shall govern thereafter.

(b) In Cook County, until (1) a method of election of county board members different from the method in existence on the effective date of this Constitution is approved by a majority of votes cast both in Chicago and in the area outside Chicago in a county-wide referendum or (2) the Cook County Board by ordinance divides the county into single member districts from which members of the County Board resident in each district are elected, the number of members of the Cook County Board shall be fifteen except that the county board may increase the number if necessary to comply with apportionment requirements. If either of the foregoing changes is made, the provisions of Section 3(a) of Article VII shall apply thereafter to Cook County.

(c) Townships in existence on the effective date of this Constitution are continued until consolidated, merged, divided or dissolved in accordance with Section 5 of Article VII.

SECTION 6. AUTHORIZED BONDS

Nothing in Section 9 of Article IX shall be construed to limit or impair the power to issue bonds or other evidences of indebtedness authorized but unissued on the effective date of this Constitution.

SECTION 8. CUMULATIVE VOTING FOR DIRECTORS

Shareholders of all corporations heretofore organized under any law of this State which requires cumulative voting of shares for corporate directors shall retain their right to vote cumulatively for such directors.

The Illinois Supreme Court upheld a law allowing the shareholders of a corporation organized before the 1970 Constitution, by unanimous vote, to abolish cumulative voting rights in that corporation.[1]

An Illinois Appellate Court decision held that this section did not prevent a corporation from adopting a so-called "poison pill" designed to dilute the voting rights of any shareholder who acquired more than 10% of its shares. Acquiring shareholders had argued that the poison pill would prevent them from ever getting enough votes to elect even one director by cumulative voting, thus making useless the guarantee of cumulative voting for corporations that were chartered before the 1970 Constitution took effect. But the Appellate Court said the guarantee of cumulative voting did not prohibit such indirect effects.[2]

SECTION 9. GENERAL TRANSITION

The rights and duties of all public bodies shall remain as if this Constitution had not been adopted with the exception of such changes as are contained in this Constitution. All laws, ordinances, regulations and rules of court not contrary to, or inconsistent

with, the provisions of this Constitution shall remain in force, until they shall expire by their own limitation or shall be altered or repealed pursuant to this Constitution. The validity of all public and private bonds, debts and contracts, and of all suits, actions and rights of action, shall continue as if no change had taken place. All officers filling any office by election or appointment shall continue to exercise the duties thereof, until their offices shall have been abolished or their successors selected and qualified in accordance with this Constitution or laws enacted pursuant thereto.

An Illinois law prevents workers' compensation decisions by the Illinois Industrial Commission, in cases of claims against the state, from being appealed in court.[3] An Illinois Appellate Court decision cited this section of the Transition Schedule as support for upholding that provision due to the state's sovereign immunity, despite the statement in Article 13, section 4 that sovereign immunity is abolished "[e]xcept as the General Assembly may provide by law . . . ." An injured employee had argued that asserting the state's sovereign immunity against appeals of Industrial Commission decisions would require a re-enactment of that statutory provision after the 1970 Constitution took effect (an argument apparently based on Illinois courts' holdings that a law enacted before the 1970 Constitution does not restrict home-rule powers). But the Appellate Court panel said the state's sovereign immunity from appeals of Industrial Commission decisions need not be re-enacted to continue.[4]

Endnotes

Explanation of citations

Court cases

For brevity, citations to court cases give the volume number, an abbreviation of the name of that series of volumes, and then the page number. For example, "123 Ill. 2d 456" would mean the case reported in volume 123 of the Illinois Reports, 2d Series, beginning at page 456; and "456 Ill. App. 3d 789" would mean the case reported in volume 456 of the Illinois Appellate Reports, 3d Series, beginning at page 789. After citing a case in the official Illinois Reports or Illinois Appellate Reports, each note here gives a parallel citation of the same case to the Northeastern Reporter published by West Group, which contains the same text but has different headnotes (brief summaries of points decided in the case). A typical citation to the Northeastern Reporter is "357 N.E.2d 468," which means the case reported in volume 357 of the Northeastern Reporter, 2d Series, beginning at page 468.

The notation "cert. den." or "app. dis." followed by a volume and page number of the United States Reports ("U.S.") or West Group's Supreme Court Reporter ("S. Ct.") means that at least one party asked the U.S. Supreme Court to change the decision of the Illinois court in the case, but the U.S. Supreme Court refused to do so. This usually indicates neither approval nor disapproval by the U.S. Supreme Court—merely a determination that no significant federal issue was involved.

Laws

Illinois statutes currently in effect are cited here to the Illinois Compiled Statutes (ILCS), a classification system for all permanent Illinois laws that took effect January 1, 1993. Illinois laws in the ILCS classification are offered by legal publishers in print, CD-ROM, and on-line versions. A citation to ILCS consists of the chapter number, followed by the letters "ILCS" and the act number, a slash, and the number the section has within that act. Thus "20 ILCS 15/5" means Illinois Compiled Statutes, chapter 20, act 15, section 5. Statutes no longer in existence are cited to the former Illinois Revised Statutes, which was arranged by chapter number and by section number within each chapter.

Citations to current federal laws look like this: 12 U.S. Code section 345, which means United States Code, title 12, section 345.

Article 1. Bill of Rights

1. People v. Brown, 407 Ill. 565, 95 N.E.2d 888 (1950).
2. Figura v. Cummins, 4 Ill. 2d 44, 122 N.E.2d 162 (1954).
3. People v. McPherson, 65 Ill. App. 3d 772, 382 N.E.2d 858 (1978); Wilson v. Bishop, 82 Ill. 2d 364, 412 N.E.2d 522 (1980).
4. Grattan v. Ahlberg Bearing Co., 373 Ill. 455, 26 N.E.2d 499 (1940); Estate of Oliver v. Wildermuth, 50 Ill. App. 3d 1, 365 N.E.2d 281 (1977).
5. People v. Scott, 326 Ill. 327, 157 N.E. 247 (1927); People v. Ruffalo, 69 Ill. App. 3d 532, 388 N.E.2d 114 (1979).
6. See, for example, Casparis Stone Co. v. Industrial Board of Illinois, 278 Ill. 77, 115 N.E. 822 (1917); Schuman v. Chicago Transit Auth., 407 Ill. 313, 95 N.E.2d 447 (1950); Heimgaertner v. Benjamin Elec. Mfg. Co., 6 Ill. 2d 152, 128 N.E.2d 691 (1955). The provision in the 1870 Constitution on local or special laws was art. 4, Section 22.
7. People v. Reed, 148 Ill. 2d 1, 591 N.E.2d 455 (1992); Nevitt v. Langfelder, 157 Ill. 2d 116, 623 N.E.2d 281 (1993).
8. Two such cases were Winter v. Barrett, 352 Ill. 441, 186 N.E. 113 (1933) and Central Television Service, Inc. v. Isaacs, 27 Ill. 2d 420 at 428, 189 N.E.2d 333 at 337 (1963).
9. See, for example, People v. Lindner, 127 Ill. 2d 174, 535 N.E.2d 829 (1989).
10. Seifert v. Standard Paving Co., 64 Ill. 2d 109, 355 N.E.2d 537 (1976); Fujimura v. Chicago Transit Auth., 67 Ill. 2d 506, 368 N.E.2d 105 (1977).
11. Rios v. Jones, 63 Ill. 2d 488, 348 N.E.2d 825 (1976), app. dis. 429 U.S. 934.
12. Anderson v. Wagner, 79 Ill. 2d 295, 402 N.E.2d 560 (1979).
13. Broeckl v. Chicago Park Dist., 131 Ill. 2d 79, 544 N.E.2d 792 (1989), cert. den. 494 U.S. 1005.
14. People v. Wagner, 89 Ill. 2d 308, 433 N.E.2d 267 (1982); People v. Wisslead, 94 Ill. 2d 190, 446 N.E.2d. 512 (1983).
15. Haughton v. Haughton, 76 Ill. 2d 439, 394 N.E.2d 385 (1979).
16. People v. Cook, 81 Ill. 2d 176, 407 N.E.2d 56 (1980).
17. See Massachusetts Bd. of Retirement v. Murgia, 427 U.S. 307 at 312 n. 3, 96 S. Ct. 2562 at 2566 (1976). Sex has been declared a suspect classification in Illinois under the 1970 Constitution, art. 1 Section 18 (People v. Ellis, 57 Ill. 2d 127, 311 N.E.2d 98 (1974)).
18. Massachusetts Bd. of Retirement v. Murgia, 427 U.S. 207 at 312 n. 3, 96 S. Ct. 2562 (1976); People ex.

rel. Tucker v. Kotsos, 68 Ill. 2d 88, 368 N.E.2d 903 (1977); Rawlings v. Ill. Dept. of Law Enforcement, 73 Ill. App. 3d 267, 391 N.E.2d 758 (1979).

19. Cantwell v. Connecticut, 310 U.S. 296, 60 S. Ct. 900 (1940); School Dist. of Abington Twp. v. Schempp, 374 U.S. 203, 83 S. Ct. 1560 (1963).
20. People ex rel. Ring v. Board of Ed. of Dist. 24, 245 Ill. 334, 92 N.E. 251 (1910).
21. People ex rel. Wallace v. Labrenz, 411 Ill. 618, 104 N.E.2d 769 (1952), cert. den. 344 U.S. 824.
22. Bodewes v. Zuroweste, 15 Ill. App. 3d 101, 303 N.E.2d 509 (1973), review denied by Ill. Sup. Ct.
23. Wood v. School Dist. No. 651, 18 Ill. App. 3d 33, 309 N.E.2d 408 (1974).
24. Opyt's Amoco, Inc. v. Village of South Holland, 149 Ill. 2d 265, 595 N.E.2d 1060 (1992).
25. Schneider v. New Jersey, 308 U.S. 147, 60 S. Ct. 146 (1939); Bigelow v. Virginia, 421 U.S. 809, 95 S. Ct. 2222 (1975).
26. People v. Sterling, 52 Ill. 2d 287, 287 N.E.2d 711 (1972); People v. DiGuida, 152 Ill. 2d 104, 604 N.E.2d 336 (1992).
27. Seidelman v. Kouvavus, 57 Ill. App. 3d 350, 373 N.E.2d 53 (1978).
28. Barr v. Kelso-Burnett Co., 106 Ill. 2d 520, 478 N.E.2d 1354 (1985).
29. Talsky v. Dept. of Registration and Education, 68 Ill. 2d 579, 370 N.E.2d 173 (1977), cert. den. 439 U.S. 820.
30. Redemske v. Village of Romeoville, 85 Ill. App. 3d 286, 406 N.E.2d 602 (1980).
31. Schiller Park Colonial Inn, Inc. v. Berz, 63 Ill. 2d 499, 349 N.E.2d 61 (1976).
32. City of Chicago v. Groffman, 68 Ill. 2d 112, 368 N.E.2d 891 (1977).
33. Village of Skokie v. National Socialist Party, 69 Ill. 2d 605, 373 N.E.2d 21 (1978).
34. Dendor v. Board of Fire & Police Comm'rs, 11 Ill. App. 3d 582, 297 N.E.2d 316 (1973), overruled as to another issue Lockett v. Chicago Police Board, 133 Ill. 2d 349 at 356, 549 N.E.2d 1266 at 1269 (1990); Hasenstab v. Board of Fire & Police Comm'rs, 71 Ill. App. 3d 244, 389 N.E.2d 588 (1979).
35. Shewmake v. Board of Fire & Police Comm'rs, 71 Ill. App. 3d 1052, 390 N.E.2d 536 (1979).
36. Schafer v. Board of Fire & Police Comm'rs, 69 Ill. App. 3d 677, 387 N.E.2d 976 (1979).
37. Griggs v. Board of Fire Comm'rs, 102 Ill. App. 3d 614, 430 N.E.2d 188 (1981).
38. Lupo v. Board of Fire & Police Comm'rs, 82 Ill. App. 3d 449, 402 N.E.2d 624 (1979).
39. New York Times Co. v. Sullivan, 376 U.S. 254, 84 S. Ct. 710 (1964).
40. Farnsworth v. Tribune Co., 43 Ill. 2d 286, 253 N.E.2d 408 (1969).
41. Colson v. Stieg, 89 Ill. 2d 205, 433 N.E.2d 246 (1982).
42. Philadelphia Newspapers, Inc. v. Hepps, 475 U.S. 767, 106 S. Ct. 1558 (1986).
43. People v. Heinrich, 104 Ill. 2d 137, 470 N.E.2d 966 (1984).
44. P.A. 84-1047, Section 1 (1984), repealing former Ill. Rev. Stat., ch. 38, secs. 27-1 and 27-2. A much older law (740 ILCS 145/0.01 ff., enacted in 1874) makes a few kinds of defamatory allegations subject to suit, but only civilly.
45. Elfbrandt v. Russell, 384 U.S. 11, 86 S. Ct. 1238 (1966).
46. People v. Thompson, 56 Ill. App. 3d 557, 372 N.E.2d 117 (1978).
47. People v. Witzkowski, 53 Ill. 2d 216, 290 N.E.2d 236 (1972), app. dis. 434 U.S. 883.
48. City of Chicago v. Weiss, 51 Ill. 2d 113, 281 N.E.2d 310 (1972), cert. den. 409 U.S. 896.
49. People v. Heflin, 71 Ill. 2d 525, 376 N.E.2d 1367 (1978), cert. den. 439 U.S. 1074; People v. Luetkemeyer, 74 Ill. App. 3d 708, 393 N.E.2d 117 (1979), cert. den. 446 U.S. 938; In re Interest of J.A., 85 Ill. App. 3d 567, 406 N.E. 958 (1980).
50. Oden v. Cahill, 79 Ill. App. 3d 768, 398 N.E.2d 1061 (1979).
51. People v. Joyner, 50 Ill. 2d 302, 278 N.E.2d 756 (1972).
52. People v. Campbell, 67 Ill. 2d 308, 367 N.E.2d 949 (1977), cert. den. 435 U.S. 942.
53. People v. Miller, 36 Ill. App. 3d 542, 345 N.E.2d 1 (1975).
54. People v. Connolly, 55 Ill. 2d 421, 303 N.E.2d 409 (1973).
55. People v. Wealer, 264 Ill. App. 3d 6, 636 N.E.2d 1129 (1994); People v. Calahan, 272 Ill. App. 3d 293, 649 N.E.2d 588 (1995). The statutory section is 730 ILCS 5/5-4-3.
56. Mapp v. Ohio, 367 U.S. 643, 81 S. Ct. 1684 (1961).
57. People v. Brocamp, 307 Ill. 448, 138 N.E. 728 (1923); City of Chicago v. Lord, 7 Ill. 2d 379, 130 N.E.2d 504 (1955).
58. Illinois v. Krull, 480 U.S. 340, 107 S. Ct. 1160 (1987).
59. People v. Mashaney, 160 Ill. App. 3d 390, 513 N.E.2d 615 (1987) endorsed a "good faith" exception to the exclusionary rule for illegally obtained evidence; People v. Garriott, 253 Ill. App. 3d 1048, 625 N.E.2d 780 (1993) may also have done so.
60. Bianco v. American Broadcasting Companies, 470 F. Supp. 182 (N.D. Ill. 1979); People v. Smith, 72 Ill. App. 3d 956, 390 N.E.2d 1356 (1979).
61. Record of Proceedings, Sixth Illinois Constitutional Convention, vol. VI, p. 32 (explanation of Proposal No. 1 of Bill of Rights Committee).
62. 725 ILCS 5/108A-1 ff. See also 725 ILCS 5/108B-1 ff., enacted in 1988.
63. Record of Proceedings, Sixth Illinois Constitutional Convention, vol. VI, pp. 30-31 (explanation of Proposal No. 1 of Bill of Rights Committee).
64. People v. Richardson, 60 Ill. 2d 189, 328 N.E.2d 260 (1975), app. dis., cert. den. 423 U.S. 805.
65. People v. Gervasi, 89 Ill. 2d 522, 434 N.E.2d 1112 (1982).
66. People v. Shinkle, 128 Ill. 2d 480, 539 N.E.2d 1238 (1989).
67. Stein v. Howlett, 52 Ill. 2d 570, 289 N.E.2d 409 (1972), app. dis. 412 U.S. 925. The Act is in 5 ILCS 420/1-101 ff.
68. Illinois State Employees' Ass'n v. Walker, 57 Ill. 2d 512, 315 N.E.2d 9 (1974), cert. den. 419 U.S. 1058.

Part of the executive order, No. 73-4, is printed in the opinion.

69. 725 ILCS 5/111-2(a) and (b).
70. Hurtado v. California, 110 U.S. 516, 4 S. Ct. 111 (1884); Branzburg v. Hayes, 408 U.S. 665, 92 S. Ct. 2646 (1972); Watson v. Jago, 558 F.2d 330 (6th Cir. 1977).
71. People v. Kent, 54 Ill. 2d 161, 295 N.E.2d 710 (1972); People v. Creque, 72 Ill. 2d 515, 382 N.E.2d 793 (1978), cert. den. 441 U.S. 912.
72. 725 ILCS 5/111-2(f), upheld in People v. Redmond, 67 Ill. 2d 242, 367 N.E.2d 702 (1977), cert. den. 434 U.S. 1078.
73. 725 ILCS 5/109-3.1. See also 725 ILCS 5/114-1(a)(11).
74. Right to counsel: Gideon v. Wainwright, 372 U.S. 335, 83 S. Ct. 792 (1963).
    Right to be informed of nature of accusation: In re Oliver, 333 U.S. 257, 68 S. Ct. 499 (1948); Spinkellink v. Wainwright, 578 F.2d 582 (5th Cir. 1978), cert. den. 440 U.S. 976.
    Right to confront witnesses: Dutton v. Evans, 400 U.S. 74, 91 S. Ct. 210 (1970).
    Right to compel attendance of defense witnesses: Washington v. Texas, 388 U.S. 14, 87 S. Ct. 1920 (1967).
    Speedy trial: Klopfer v. North Carolina, 386 U.S. 213, 87 S. Ct. 988 (1967).
    Public trial: In re Oliver, 333 U.S. 257, 68 S. Ct. 499 (1948); U.S. ex rel. Bennett v. Rundle, 419 F.2d 599 (3d Cir. 1969).
    Impartial trial: Parker v. Gladden, 385 U.S. 363, 87 S. Ct. 468 (1966).
    Trial by jury (with some limitations): Duncan v. Louisiana, 391 U.S. 145, 88 S. Ct. 1444 (1968).
75. United States v. Hayman, 342 U.S. 205, 72 S. Ct. 263 (1952); Wade v. United States, 441 F.2d 1046 (D.C. Cir. 1971).
76. People v. Sandoval, 135 Ill. 2d 159, 552 N.E.2d 726 (1990), cert. den. 498 U.S. 938. The statutory provision is 725 ILCS 5/115-7.
77. People v. Foskey, 136 Ill. 2d 66, 554 N.E.2d 192 (1990). The statutory privilege involved is in 725 ILCS 125/6.
78. People v. Fitzpatrick, 158 Ill. 2d 360, 633 N.E.2d 685 (1994). The law is 725 ILCS 5/106B-1.
79. The constitutional amendment was proposed by 88th General Assembly Senate Joint Resolution 123.
80. Maryland v. Craig, 497 U.S. 836, 110 S. Ct. 3157 (1990). The Court's bare majority of five justices emphasized that they were upholding the Maryland law only as applied in that case, rather than giving it blanket approval. The Illinois Supreme Court earlier in People v. Bastien, 129 Ill. 2d 64, 541 N.E.2d 670 (1989) struck down a since-repealed law providing for testimony of child victims of sex crimes to be videotaped and later shown in court. Such videotaping, unlike live closed-circuit television, would prevent a defendant from being able to raise objections or ask questions about the testimony as it occurred.
81. 725 ILCS 5/103-5.
82. People v. Anderson, 53 Ill. 2d 437, 292 N.E.2d 364 (1973); People v. Richards, 81 Ill. 2d 454, 410 N.E.2d 833 (1980); People v. Staten, 159 Ill. 2d 419 at 426, 639 N.E.2d 550 at 554 (1994) (apparently endorsing cases so holding).
83. See People v. Staten, 159 Ill. 2d 419 at 427, 639 N.E.2d 550 at 555 (1994).
84. The constitutional amendment was proposed by 87th General Assembly House Joint Resolution—Constitutional Amendment 28.
85. 725 ILCS 120/1 ff.
86. Robinson v. California, 370 U.S. 660, 82 S. Ct. 1417 (1962); Rhodes v. Chapman, 452 U.S. 337, 101 S. Ct. 2392 (1981).
87. People ex rel. Hemingway v. Elrod, 60 Ill. 2d 74, 322 N.E.2d 837 (1975).
88. 720 ILCS 5/9-1.
89. The constitutional amendment was proposed by 82nd General Assembly Senate Joint Resolution 36.
90. The constitutional amendment was proposed by 84th General Assembly Senate Joint Resolution 22.
91. People ex rel. Hemingway v. Elrod, 60 Ill. 2d 74, 322 N.E.2d 837 (1975).
92. U.S. Const., art. I, Section 9, cl. 2.
93. Gasquet v. Lapeyre, 242 U.S. 367, 37 S. Ct. 165 (1917); Geach v. Olsen, 211 F.2d 682 (7th Cir. 1954).
94. Malloy v. Hogan, 378 U.S. 1, 84 S. Ct. 1489 (1964) (self-incrimination); Brown v. Ohio, 431 U.S. 161, 97 S. Ct. 2221 (1977) (double jeopardy).
95. People v. Davis, 11 Ill. App. 3d 775, 298 N.E.2d 350 (1973); Hoban v. Rochford, 73 Ill. App. 3d 671, 392 N.E.2d 88 (1979), review denied by Ill. Sup. Ct.
96. Hoban v. Rochford, 73 Ill. App. 3d 6571, 392 N.E.2d 88 (1979).
97. United States v. Thomann, 609 F.2d 560 (1st Cir. 1979).
98. United States v. Mara, 410 U.S. 19, 93 S. Ct. 774 (1973).
99. Schmerber v. California, 384 U.S. 757, 86 S. Ct. 1826 (1966); Grimes v. United States, 405 F.2d 477 (5th Cir. 1968).
100. Griffin v. California, 380 U.S. 609, 85 S. Ct. 1229 (1965); People v. Burton, 44 Ill. 2d 53, 254 N.E.2d 527 (1969).
101. People v. McCauley, 163 Ill. 2d 414, 645 N.E.2d 923 (1994).
102. Moran v. Burbine, 475 U.S. 412, 106 S. Ct. 1135 (1986).
103. See People v. Levin, 157 Ill. 2d 138, 623 N.E.2d 317 (1993).
104. In re P.S., 169 Ill. 2d 260, 661 N.E.2d 329 (1996).
105. Wilson v. Department of Revenue, No. 77708 (Ill. Sup. Ct. Feb. 15, 1996). The statute providing for the tax is 35 ILCS 520/1 ff.
106. Department of Revenue of Montana v. Kurth Ranch, 511 U.S.767, 114 S. Ct. 1937 (1994). The Illinois Supreme Court earlier cautiously upheld the state's tax in Rehg v. Illinois Department of Revenue, 152 Ill. 2d 504, 605 N.E.2d 525 (1992), but decided that the U.S. Supreme Court's later decision in the Kurth Ranch case required it to overrule the Rehg case. However, see also United States v. Ursery, No. 95-345 (U.S. Sup. Ct. June 24, 1996).

107. People v. Towns, 269 Ill. App. 3d 907, 646 N.E.2d 1366 (1995). Compare People v. Krizek, 271 Ill. App. 3d 533, 648 N.E.2d 313 (1995) (mere seizure of drug-related property as a step in process intended to lead to forfeiture is not a punishment, so prosecution for the drug crime is not barred).
108. People v. Morris, 136 Ill. 2d 157, 554 N.E.2d 235 (1990).
109. People v. Howard, 147 Ill. 2d 103, 588 N.E.2d 1044 (1991), cert. den. 113 S. Ct. 215.
110. See, for example, People v. Brownell, 79 Ill. 2d 508, 404 N.E.2d 181 (1980), cert. dis. 449 U.S. 811 (death); People v. Taylor, 102 Ill. 2d 201, 464 N.E.2d 1059 (1984) (life imprisonment).
111. See, for example, People v. Wright, 18 Ill. App. 3d 1028, 310 N.E.2d 494 (1974), review denied by Ill. Sup. Ct.; People v. James, 38 Ill. App. 3d 594, 348 N.E.2d 295 (1976), app. dis. 429 U.S. 1082; People v. Gomez, 120 Ill. App. 3d 545, 458 N.E.2d 565 (1983), review denied by Ill. Sup. Ct.; People v. Castro, 151 Ill. App. 3d 664, 503 N.E.2d 376 (1987), review denied by Ill. Sup. Ct.; People v. D'Angelo, 223 Ill. App. 3d 754, 585 N.E.2d 1239 (1992), review denied by Ill. Sup. Ct.
112. See, for example, People v. Shriner, 198 Ill. App. 3d 748, 555 N.E.2d 1257 (1990), review denied by Ill. Sup. Ct.; People v. Knott, 224 Ill. App. 3d 236, 586 N.E.2d 479 (1991), vac'd as moot due to defendant's death 621 N.E.2d 611; People v. Dunigan, 263 Ill. App. 3d 83, 635 N.E.2d 522 (1994); and People v. Smith, 274 Ill. App. 3d 84, 653 N.E.2d 944 (1995). The habitual-criminal law is in 720 ILCS 5/33B-1 ff.
113. See, for example, People v. Kane, 31 Ill. App. 3d 500, 333 N.E.2d 247 (1975); People v. Kish, 58 Ill. App. 3d 215, 374 N.E.2d 10 (1978).
114. U.S. Const., art. III, Section 3, cl. 2.
115. Polyvend, Inc. v. Puckorius, 77 Ill. 2d 287, 395 N.E.2d 1376 (1979), app. dis. 444 U.S. 1062. The statute is 30 ILCS 505/10-1.
116. Kerner v. State Employees' Retirement System, 72 Ill. 2d 507, 382 N.E.2d 243 (1978), cert. den. 441 U.S. 923. The prohibition on payments to members of the State Employees' Retirement System who are convicted of employment-related felonies is in 40 ILCS 5/14-149; similar provisions are in other articles of the Illinois Pension Code.
117. Sayles v. Thompson, 99 Ill. 2d 122, 457 N.E.2d 440 (1983).
118. Sullivan v. Midlothian Park Dist., 51 Ill. 2d 274, 281 N.E.2d 659 (1972); Adams v. City of Peoria, 77 Ill. App. 3d 683, 396 N.E.2d 572 (1979), review denied by Ill. Sup. Ct.
119. Smith v. Hill, 12 Ill. 2d 588, 147 N.E.2d 321 (1958); Siegall v. Solomon, 19 Ill. 2d 145, 166 N.E.2d 5 (1960). These laws are now in 740 ILCS 15/1 ff. and 740 ILCS 5/1 ff.
120. Heck v. Schupp, 394 Ill. 296, 68 N.E.2d 464 (1946).
121. Zalduendo v. Zalduendo, 45 Ill. App. 3d 849, 360 N.E.2d 386 (1977), review denied by Ill. Sup. Ct.
122. Crocker v. Finley, 99 Ill. 2d 444, 459 N.E.2d 1346 (1984).
123. Wenger v. Finley, 185 Ill. App. 3d 907, 541 N.E.2d 1220 (1989), review denied by Ill. Sup. Ct.
124. Minneapolis & St. L. R.R. v. Bombolis, 241 U.S. 211, 36 S. Ct. 595 (1916); State Farm Mut. Auto Ins. Co. v. Baasch, 644 F.2d 94 at 97 (2d Cir. 1981).
125. Reese v. Laymon, 2 Ill. 2d 614, 119 N.E.2d 271 (1954); Martin v. Heinold Commodities, Inc., 163 Ill. 2d 33 at 72-74, 643 N.E.2d 734 at 753 (1994).
126. People ex rel. Daley v. Joyce, 126 Ill. 2d 209, 533 N.E.2d 873 (1988). The law (Ill. Rev. Stat. 1987 and 1989, ch. 38, Section 115-1) was repealed by P.A. 87-410 (1991). See now 725 ILCS 5/115-1.
127. People v. Martin, 47 Ill. 2d 331, 265 N.E.2d 685 (1970), cert. den. 403 U.S. 921; People v. Dennis, 28 Ill. App. 3d 74, 328 N.E.2d 135 (1975).
128. Fried v. Danaher, 46 Ill. 2d 469, 263 N.E.2d 820 (1970), app. dis. 402 U.S. 902.
129. People ex rel. O'Malley v. 6323 North LaCrosse Ave., 158 Ill. 2d 453, 634 N.E.2d 743 (1994). The Act is in 725 ILCS 150/1 ff.
130. People v. Arman, 215 Ill. App. 3d 687, 576 N.E.2d 11 (1991), review denied by Ill. Sup. Ct. The law involved was the Narcotics Profit Forfeiture Act, 725 ILCS 175/1 ff.
131. People v. Woerly, 50 Ill. 2d 327, 278 N.E.2d 787 (1972).
132. 725 ILCS 5/103-6.
133. Grand Trunk Western Ry. v. Industrial Comm'n, 291 Ill. 167, 125 N.E. 748 (1919).
134. City of Monmouth v. Pollution Control Bd., 57 Ill. 2d 482, 313 N.E.2d 161 (1974).
135. Martin v. Heinold Commodities, Inc., 163 Ill. 2d 33 at 75, 643 N.E.2d 734 at 754 (1994).
136. Johnson v. Rolston, 45 Ill. App. 3d 419, 359 N.E.2d 1115 (1977).
137. People v. Harris, 41 Ill. App. 3d 690, 354 N.E.2d 648 (1976), review denied by Ill. Sup. Ct.
138. Kazubowski v. Kazubowski, 45 Ill. 2d 405, 259 N.E.2d 282 (1970), cert. den. 400 U.S. 926.
139. In re Petition of Blacklidge, 359 Ill. 482, 195 N.E. 3 (1935); Shatz v. Paul, 7 Ill. App. 2d 23, 129 N.E.2d 348 (1955). See 735 ILCS 5/12-107.
140. 730 ILCS 5/5-9-1(e).
141. Chicago, B. & Q. R.R. v. Chicago, 166 U.S. 226, 17 S. Ct. 581 (1897); San Diego Gas & Elec. Co. v. City of San Diego, 450 U.S. 621, 101 S. Ct. 1287 (1981).
142. Morton Grove Park Dist. v. American Nat'l Bank & Trust Co., 78 Ill. 2d 353, 399 N.E.2d 1295 (1980); Warner/Elektra/Atlantic Corp. v. County of DuPage, 991 F.2d 1280 (7th Cir. 1993).
143. Federal Elec. Co. v. Zoning Bd. of Appeals, 398 Ill. 142, 75 N.E.2d 359 (1947).
144. County of Cook v. Priester, 62 Ill. 2d 357, 342 N.E.2d 41 (1976).
145. Dolan v. City of Tigard, 512 U.S. 374 at 384, 114 S. Ct. 2309 at 2316 (1994).
146. Pioneer Trust & Savings Bank v. Village of Mount Prospect, 22 Ill. 2d 375, 176 N.E.2d 799 (1961).
147. Northern Illinois Home Builders Ass'n v. County of Du Page, 165 Ill. 2d 25, 649 N.E.2d 384 (1995). See also Amoco Oil Co. v. Village of Schaumburg, 277 Ill. App. 3d 926, 661 N.E.2d 380 (1995).
148. Stein v. Howlett, 52 Ill. 2d 570 at 584, 289 N.E.2d 409 at 416 (1972), app. dis. 412 U.S. 925; In re Samuels,

126 Ill. 2d 509, 535 N.E.2d 808 (1989).
149. People v. Anderson, 53 Ill. 2d 437, 292 N.E.2d 364 (1973); People v. Massarella, 80 Ill. App. 3d 552, 400 N.E.2d 436 (1979), cert. den. 449 U.S. 1077.
150. People v. Myers, 44 Ill. App. 3d 860, 359 N.E.2d 197 (1977); People v. Goff, 57 Ill. App. 3d 384, 373 N.E.2d 71 (1978).
15`. People v. Shumpert, 126 Ill. 2d 344, 533 N.E.2d 1106 (1989).
151. Tiller v. Klincar, 138 Ill. 2d 1, 561 N.E.2d 576 (1990), cert. den. 498 U.S. 1031.
153. Sepmeyer v. Holman, 162 Ill. 2d 249, 642 N.E.2d 1242 (1994).
154. Campbell v. Holt, 115 U.S. 620, 6 S. Ct. 209 (1885); Chase Securities Corp. v. Donaldson, 325 U.S. 304, 65 S. Ct. 1137 (1945).
155. Sepmeyer v. Holman, 162 Ill. 2d at 257-264, 642 N.E.2d at 1245-1249 (Bilandic, C.J. and Miller, J., dissenting).
156. Kujawinski v. Kujawinski, 71 Ill. 2d 563, 376 N.E.2d 1382 (1978).
157. Meegan v. Village of Tinley Park, 52 Ill. 2d 354, 288 N.E.2d 423 (1972).
158. Chmelik v. Vana, 31 Ill. 2d 272, 201 N.E.2d 434 (1964); S & D Service, Inc. v. 915-925 W. Schubert Condo. Ass'n, 132 Ill. App. 3d 1019, 478 N.E.2d 478 (1985), review denied by Ill. Sup. Ct.
159. Polich v. Chicago School Finance Auth., 79 Ill. 2d 188, 402 N.E.2d 247 (1980).
160. Fumarolo v. Chicago Board of Educ., 142 Ill. 2d 54, 566 N.E.2d 1283 (1990). The law involved was P.A. 85-1418 (1988).
161. George D. Hardin, Inc. v. Village of Mount Prospect, 99 Ill. 2d 96, 457 N.E.2d 429 (1983).
162. Boyd v. Madison Mutual Ins. Co., 116 Ill. 2d 305, 507 N.E.2d 855 (1987); Prudential Prop. & Cas. Ins. Co. v. Scott, 161 Ill. App. 3d 372, 514 N.E.2d 595 (1987).
163. U.S. Const., art. I, Section 10.
164. People ex rel. County Collector v. Northwestern Univ., 51 Ill. 2d 131, 281 N.E.2d 334 (1972), cert. den. 409 U.S. 852.
165. 35 ILCS 200/9-195.
166. Nabisco, Inc. v. Korzen, 68 Ill. 2d 451, 369 N.E.2d 829 (1977), app. dis. 435 U.S. 1005.
167. Roth v. Yackley, 77 Ill. 2d 423, 396 N.E.2d 520 (1979); In re Marriage of Cohn, 93 Ill. 2d 190 at 203, 443 N.E.2d 541 at 547 (1982); Bates v. Board of Educ., Allendale Comm. Cons. Sch. Dist., 136 Ill. 2d 260 at 267, 555 N.E.2d 1 at 4 (1990).
168. Sanelli v. Glenview State Bank, 108 Ill. 2d 1 at 10, 483 N.E.2d 226 at 229-230 (1985); In re Petition of Kirchner, 164 Ill. 2d 468 at 495, 649 N.E.2d 324 at 336-37 (1995).
169. Mitchell v. Mahin, 51 Ill. 2d 452 at 456, 283 N.E.2d 465 at 467 (1972); In re Marriage of Cohn, 93 Ill. 2d 190 at 203, 443 N.E.2d 541 at 547 (1982); Bates v. Board of Educ., Allendale Comm. Cons. Sch. Dist., 136 Ill. 2d 260 at 267, 555 N.E.2d 1 at 4 (1990).
170. See, for example, Schlenz v. Castle, 84 Ill. 2d 196, 417 N.E.2d 1336 (1981); Bates v. Board of Educ., Allendale Comm. Cons. Sch. Dist., 136 Ill. 2d 260 at 267, 555 N.E.2d 1 at 4 (1990). By contrast, Application of County Collector v. American Nat'l Bank & Trust Co., 132 Ill. 2d 64, 547 N.E.2d 107 (1989) held that an attempted validating law was invalid because it attempted to invade home-rule powers.
171. Record of Proceedings, Sixth Illinois Constitutional Convention, vol. VI, pp. 67-70 (explanation of Proposal No. 1 of Bill of Rights Committee).
172. Davis v. Attic Club, 56 Ill. App. 3d 58, 371 N.E.2d 903 (1977), review denied by Ill. Sup. Ct.
173. 775 ILCS 5/1-101 ff.
174. School Dist. No. 175, St. Clair County v. Illinois Fair Employment Practices Comm'n, 57 Ill. App. 3d 979, 373 N.E.2d 447 (1978); Walinski v. Morrison & Morrison, 60 Ill. App. 3d 616, 377 N.E.2d 242 (1978).
175. 775 ILCS 5/8-111(C).
176. Mein v. Masonite Corp., 109 Ill. 2d 1, 485 N.E.2d 312 (1985); Baker v. Miller, 159 Ill. 2d 249, 636 N.E.2d 551 (1994).
177. Baker v. Miller, 159 Ill. 2d 249, 636 N.E.2d 551 (1994).
178. Greenholdt v. Illinois Bell Tel. Co., 107 Ill. App. 3d 748, 438 N.E.2d 245 (4th Dist. 1982), review denied by Ill. Sup. Ct.; Thakkar v. Wilson Enterprises, Inc., 120 Ill. App. 3d 878, 458 N.E.2d 985 (1st Dist. 1983), review denied by Ill. Sup. Ct.
179. Ritzheimer v. Insurance Counselors, Inc., 173 Ill. App. 3d 953, 527 N.E.2d 1281 (5th Dist. 1988) (although the Illinois Supreme Court criticized at least part of its reasoning in Baker v. Miller, 159 Ill. 2d 249 at 260, 636 N.E.2d 551 at 556 (1994)); Rockford Memorial Hospital v. Department of Human Rights, 272 Ill. App. 3d 751, 651 N.E.2d 649 (2nd Dist. 1995).
180. Baker v. Miller, 159 Ill. 2d 249 at 266, 636 N.E.2d 551 at 559 (1994).
181. People v. Ellis, 57 Ill. 2d 127, 311 N.E.2d 98 (1974).
182. People v. Ellis, 57 Ill. 2d 127, 311 N.E.2d 98 (1974).
183. Phelps v. Bing, 58 Ill. 2d 32, 316 N.E.2d 775 (1974).
184. Wheeler v. City of Rockford, 69 Ill. App. 3d 220, 387 N.E.2d 358 (1979).
185. People v. Boyer, 63 Ill. 2d 433, 349 N.E.2d 50 (1976), cert. den. 429 U.S. 1063.
186. P.A. 80-647 (1977). See now 720 ILCS 5/11-11.
187. Occhino v. Illinois Liquor Control Comm'n, 28 Ill. App. 3d 967, 329 N.E.2d 353 (1975).
188. See Anagnostopoulos v. Anagnostopoulos, 22 Ill. App. 3d 479, 317 N.E.2d 681 (1974) (1st District); Strand v. Strand, 41 Ill. App. 3d 651, 355 N.E.2d 47 (1976) (2nd District); Drake v. Hohimer, 35 Ill. App. 3d 529, 341 N.E.2d 399 (1976) (4th District), review denied by Ill. Sup. Ct.; King v. Vancil, 34 Ill. App. 3d 831, 341 N.E.2d 65 (1975) (5th District). But the Third District takes the contrary position; see Randolph v. Dean, 27 Ill. App. 3d 913, 327 N.E.2d 473 (1975) and cases following it.
189. Faulkner-King v. Wicks, 226 Ill. App. 3d 962, 590 N.E.2d 511 (1992), review denied by Ill. Sup. Ct., cert. den. 113 S. Ct. 1384.
190. Lyons v. Heritage House Restaurants, Inc., 89 Ill. 2d 163, 432 N.E.2d 270 (1982); Kubik v. CNA Financial Corp., 96 Ill. App. 3d 715, 422 N.E.2d 1 (1981), review denied by Ill. Sup. Ct.

191. Advocates for the Handicapped v. Sears, Roebuck & Co., 67 Ill. App. 3d 512, 385 N.E.2d 39 (1978), review denied by Ill. Sup. Ct., cert. den. 444 U.S. 981.
192. Ill. Rev. Stat. through 1979, ch. 38, secs. 65-21 ff.; repealed and replaced by Illinois Human Rights Act, P.A. 81-1216 (1979); 775 ILCS 5/1-101 ff.
193. Melvin v. City of West Frankfort, 93 Ill. App. 3d 425, 417 N.E.2d 260 (1981).
194. 775 ILCS 5/1-103(I).
195. Pub. L. 101-336, 104 Stat. 327 (1990), codified principally in 42 U.S. Code secs. 12101 ff.
196. Ill. Rev. Stat. through 1961, ch. 38, Section 471.
197. Record of Proceedings, Sixth Illinois Constitutional Convention, vol. VI, p. 83 (explanation of Proposal No. 1 of Bill of Rights Committee).
198. Irving v. J.L. Marsh, Inc., 46 Ill. App. 3d 162, 360 N.E.2d 983 (1977).
199. Miller v. Texas, 153 U.S. 535, 14 S. Ct. 874 (1894); Cases v. United States, 131 F.2d 916 (1st Cir. 1942), cert. den. 319 U.S. 770; Commonwealth v. Davis, 369 Mass. 886, 343 N.E.2d 847 (1976).
200. Record of Proceedings, Sixth Illinois Constitutional Convention, vol. VI, p. 87 (explanation of Proposal No. 1 of Bills of Rights Committee) (footnotes omitted).
201. Record of Proceedings, Sixth Illinois Constitutional Convention, vol. III, pp. 1687, 1689, 1693, and 1718 (remarks of Delegate Foster).
202. Quilici v. Village of Morton Grove, 532 F. Supp. 1169 (N.D. Ill. 1981), aff'd 695 F.2d 261 (7th Cir. 1982), cert. den. 464 U.S. 863.
203. Kalodimos v. Village of Morton Grove, 103 Ill. 2d 483, 470 N.E.2d 266 (1984).
204. Sklar v. Byrne, 727 F.2d 633 (7th Cir. 1984).
205. Rawlings v. Illinois Dept. of Law Enforcement, 73 Ill. App. 3d 267, 391 N.E.2d 758 (1979).
206. People v. Williams, 60 Ill. App. 3d 726, 377 N.E.2d 285 (1978).

Article 2. The Powers of the State

1. See City of Waukegan v. Pollution Control Bd., 57 Ill. 2d 170, 311 N.E.2d 146 (1974) and cases cited there; People v. Bainter, 126 Ill. 2d 292, 533 N.E.2d 1066 (1989).
2. City of Waukegan v. Pollution Control Bd., 57 Ill. 2d 170, 311 N.E.2d 146 (1974).
3. County of Cook v. Ogilvie, 50 Ill. 2d 379, 280 N.E.2d 224 (1972).
4. Fields Jeep-Eagle, Inc. v. Chrysler Corp., 163 Ill. 2d 462, 645 N.E.2d 946 (1994). The provision involved is 815 ILCS 710/4(e)(8).
5. Warrior v. Thompson, 96 Ill. 2d 1, 449 N.E.2d 53 (1983).
6. P.A. 87-14, Section 2-24 (1991).
7. Roth v. Yackley, 77 Ill. 2d 423, 396 N.E.2d 520 (1979); In re Marriage of Cohn, 93 Ill. 2d 190, 443 N.E.2d 541 (1982); Bates v. Board of Educ., Allendale Comm. Cons. Sch. Dist., 136 Ill. 2d 260 at 267, 555 N.E.2d 1 at 4 (1990).
8. Sanelli v. Glenview State Bank, 108 Ill. 2d 1 at 10, 483 N.E.2d 226 at 229-230 (1985); In re Petition of Kirchner, 164 Ill. 2d 468 at 495, 649 N.E.2d 324 at 336-37 (1995).
9. Opinion S-1374 (1978 Ops. Atty. Gen., p. 140).
10. People ex rel. Chicago Dryer Co. v. City of Chicago, 413 Ill. 315 at 320, 109 N.E.2d 201 at 204 (1952); People ex rel. Rudman v. Rini, 64 Ill. 2d 321, 356 N.E.2d 4 (1976); La Salle Nat'l Trust v. Village of Westmont, 264 Ill. App. 3d 43 at 63, 636 N.E.2d 1157 at 1169 (1994). But as to filling vacancies in the General Assembly, see Kluk v. Lang, 125 Ill. 2d 306, 531 N.E.2d 790 (1988).
11. People v. Dale, 406 Ill. 238, 92 N.E.2d 761 (1950); Droste v. Kerner, 34 Ill. 2d 495, 217 N.E.2d 73 (1966), app. dis. 385 U.S. 456.

Article 3. Suffrage & Elections

1. U.S. Const. Amend. 26.
2. The constitutional amendment was proposed by 85th General Assembly House Joint Resolution—Constitutional Amendment 1.
3. Dunn v. Blumstein, 405 U.S. 330, 92 S. Ct. 995 (1972); Burns v. Fortson, 410 U.S. 686, 93 S. Ct. 1209 (1973); Marston v. Lewis, 410 U.S. 679, 93 S. Ct. 1211 (1973).
4. 10 ILCS 5/3-1.
5. Tully v. Edgar, 171 Ill. 2d 297, 664 N.E.2d 43 (1996).
6. See 110 ILCS 310/1, first paragraph.
7. Welsh v. Shumway, 232 Ill. 54, 83 N.E. 549 (1907).
8. Record of Proceedings, Sixth Illinois Constitutional Convention, vol. VII, pp. 2342-43 (explanation of Suffrage and Constitution Amending Committee Proposal No. 2).
9. Ill. Rev. Stat. through 1969, ch. 46, Section 3-5.
10. 10 ILCS 5/3-5. The amendments were made by P.A. 77-433 (1971) and P.A. 80-699 (1977).
11. "Penal institution" is so defined for purposes of the Criminal Code of 1961 (720 ILCS 5/2-14), and the Attorney General reached the same conclusion in Opinion S-1056 (1976 Ops. Atty. Gen., p. 115).
12. 10 ILCS 5/3-5.
13. Baker v. Carr, 369 U.S. 186, 82 S. Ct. 691 (1962) and its progeny.
14. Thompson v. Conti, 39 Ill. 2d 160, 233 N.E.2d 351 (1968).
15. Village of Deerfield v. Rapka, 54 Ill. 2d 217, 296 N.E.2d 336 (1973).
16. Bridgewater v. Hotz, 51 Ill. 2d 103, 281 N.E.2d 317 (1972).
17. Taylor v. County of St. Clair, 57 Ill. 2d 367, 312 N.E.2d 231 (1974).
18. Fumarolo v. Chicago Bd. of Educ., 142 Ill. 2d 54, 566 N.E.2d 1283 (1990). The 1988 act was P.A. 85-1418, amending numerous sections of the School Code (now cited as 105 ILCS 5/1-1 ff., principally 105 ILCS 5/34-1.01 ff.). After the act was re-enacted with changes (P.A. 86-1477 (1991)), it was upheld in federal court against various constitutional challenges in Pittman v. Chicago Board of Educ., 860 F. Supp. 495 (N.D. Ill. 1994).
19. In re Petition Under Section 3-12 of Chapter 105, 50

Ill. App. 3d 356, 365 N.E.2d 565 (1977).
20. Bridgewater v. Hotz, 51 Ill. 2d 103, 281 N.E.2d 317 (1972).
21. Totten v. State Bd. of Elections, 79 Ill. 2d 288, 403 N.E.2d 225 (1980).
22. 10 ILCS 5/3-2.
23. Record of Proceedings, Sixth Illinois Constitutional Convention, vol. II, pp. 1055-1063.
24. P.A. 78-918 (1973), adding Ill. Rev. Stat. 1973, ch. 46, secs. 1A-1 ff. (held unconstitutional; see next note).
25. Walker v. State Bd. of Elections, 65 Ill. 2d 543, 359 N.E.2d 113 (1976).
26. P.A. 80-1178 (1978); 10 ILCS 5/1A-1 ff.
27. Lunding v. Walker, 65 Ill. 2d 516, 359 N.E.2d 96 (1976).
28. See George D. Braden & Rubin G. Cohn, The Illinois Constitution: An Annotated and Comparative Analysis (1969), pp. 364-365.
29. See Record of Proceedings, Sixth Illinois Constitutional Convention, vol. V, pp. 4543-44 (remarks of Delegate Parkhurst).

Article 4. The Legislature

1. City of Waukegan v. Pollution Control Board, 57 Ill. 2d 170, 311 N.E.2d 146 (1974); Stofer v. Motor Vehicle Casualty Co., 68 Ill. 2d 361, 369 N.E.2d 875 (1977); Rockford Drop Forge Co. v. Pollution Control Bd., 79 Ill. 2d 271, 402 N.E.2d 602 (1980).
2. Thygesen v. Callahan, 74 Ill. 2d 404, 385 N.E.2d 699 (1979).
3. People v. Tibbitts, 56 Ill. 2d 56, 305 N.E.2d 152 (1973).
4. People ex rel. Chicago Dryer Co. v. City of Chicago, 413 Ill. 315 at 320, 109 N.E.2d 201 at 204 (1952); People ex rel. Rudman v. Rini, 64 Ill. 2d 321, 356 N.E.2d 4 (1976); La Salle Nat'l Trust v. Village of Westmont, 264 Ill. App. 3d 43 at 63, 636 N.E.2d 1157 at 1169 (1994). But as to filling vacancies in the General Assembly, see Kluk v. Lang, 125 Ill. 2d 306, 531 N.E.2d 790 (1988).
5. See 68th General Assembly Senate Joint Resolution 32 (printed in Ill. Laws 1953, p. 1924), approved by the voters in November 1954, amending Illinois Constitution of 1870, art. 4, secs. 6, 7, and 8.
6. 10 ILCS 85/0.01 ff.
7. People ex rel. Breckton v. Board of Election Comm'rs, 221 Ill. 9, 77 N.E. 321 (1906). The same principle has been stated as to public officers generally in People ex rel. Hoyne v. McCormick, 261 Ill. 413, 103 N.E. 1053 (1913) and its progeny, the most recent being Thies v. State Bd. of Elections, 124 Ill. 2d 317, 529 N.E.2d 565 (1988).
8. 10 ILCS 5/25-6 and 5/8-5.
9. Kluk v. Lang, 125 Ill. 2d 306, 531 N.E.2d 790 (1988). But as to filling vacancies in county offices, see People ex rel. Rudman v. Rini, 64 Ill. 2d 321, 356 N.E.2d 4 (1976) holding the opposite.
10. People ex rel. Scott v. Grivetti, 50 Ill. 2d 156, 277 N.E.2d 881 (1971), cert. den. 407 U.S. 921.
11. P.A. 78-42 (1973).
12. People ex rel. Pierce v. Lavelle, 56 Ill. 2d 278, 307 N.E.2d 115 (1974).
13. Schrage v. State Board of Elections, 88 Ill. 2d 87, 430 N.E.2d 483 (1981).
14. Rybicki v. State Board of Elections, 574 F. Supp. 1082, 1147, and 1161 (N.D. Ill. 1982 & 1983).
15. People ex rel. Burris v. Ryan, 147 Ill. 2d 270, 588 N.E.2d 1023 (1991).
16. People ex rel. Burris v. Ryan, 147 Ill. 2d 270 at 295, 588 N.E.2d 1033 at 1035 (1992).
17. 147 Ill. 2d at 308-314, 588 N.E.2d at 1041-1044 (dissenting opinion of Bilandic, J., joined by Clark and Freeman, JJ.).
18. Cole-Randazzo v. Ryan, 198 Ill. 2d 233, 762 N.E.2d 485 (2001) and Beaubien v. Ryan, 198 Ill. 2d 294, 762 N.E.2d 501 (2001).
19. Winters v. State Board of Elections, 197 F. Supp. 2d 1110 (N.D. Ill.) (three-judge court), aff'd without opinion 535 U.S. 967, 122 S. Ct. 1433 (2002).
20. 25 ILCS 15/0.01 ff.
21. Opinion S-548 (1972 Ops. Atty. Gen., p. 294).
22. 5 ILCS 120/1 ff.
23. Rock v. Thompson, 85 Ill. 2d 410, 426 N.E.2d 891 (1981).
24. Journal of the Senate, February 17, 1981, p. 48.
25. U.S. Const., art. I, Section 5.
26. Murphy v. Collins, 20 Ill. App. 3d 181, 312 N.E.2d 772 (1974), review denied by Ill. Sup. Ct.
27. Burritt v. Comm'rs of State Contracts, 120 Ill. 322, 11 N.E. 180 (1887).
28. Polich v. Chicago School Finance Auth., 79 Ill. 2d 188, 402 N.E.2d 247 (1980).
29. Ill. Const. 1870, art. 4, Section 13, second and third sentences.
30. See Geja's Cafe v. Metropolitan Pier & Exposition Auth., 153 Ill. 2d 239 at 256-58, 606 N.E.2d 1212 at 1220 (1992); Fuehrmeyer v. City of Chicago, 57 Ill. 2d 193 at 201-202, 311 N.E.2d 116 at 121 (1974).
31. See Fletcher v. Peck, 10 U.S. (6 Cranch) 87 (1810); Mayor of Savannah v. State, 4 Ga. 26 (1848).
32. Advanced Systems, Inc. v. Johnson, 126 Ill. 2d 484, 535 N.E.2d 797 (1989); Cutinello v. Whitley, 161 Ill. 2d 409 at 423-424, 641 N.E.2d 360 at 366 (1994).
33. Schlenz v. Castle, 84 Ill. 2d 196, 417 N.E.2d 1336 (1981), app. dis. 454 U.S. 804.
34. People v. Dunigan, 165 Ill. 2d 235, 650 N.E.2d 1026 at 1035 (1995).
35. People ex rel. Ogilvie v. Lewis, 49 Ill. 2d 476 at 487, 274 N.E.2d 87 at 94 (1971), quoting People ex rel. Gutknecht v. City of Chicago, 414 Ill. 600, 111 N.E.2d 626 (1953).
36. Fuehrmeyer v. City of Chicago, 57 Ill. 2d 193, 311 N.E.2d 116 (1974). The act held unconstitutional was P.A. 77-1818 (1972).
37. Johnson v. Edgar, 176 Ill. 2d 499, 680 N.E.2d 1372 (1997). The act held unconstitutional was P.A. 89-428 (1995).
38. People v. Reedy, 186 Ill. 2d 1, 708 N.E.2d 1114 (1999). The act held unconstitutional was P.A. 89-404 (1995).
39. 186 Ill. 2d at 12, 708 N.E.2d at 1119.
40. People v. Wooters, 188 Ill. 2d 500, 722 N.E.2d 1102

(1999). The act held unconstitutional was P.A. 89-203 (1995).
41. People v. Cervantes, 189 Ill. 2d 80, 723 N.E.2d 265 (1999). The act held unconstitutional was P.A. 88-680 (1994).
42. People v. Sypien, 198 Ill. 2d 334, 763 N.E.2d 264 (2001). The act held unconstitutional was P.A. 90-456 (1997).
43. People v. Burdunice, 211 Ill. 2d 264, 811 N.E.2d 678 (2004). The act held unconstitutional was P.A. 89-688 (1996).
44. Arangold Corp. v. Zehnder, 187 Ill. 2d 341, 718 N.E.2d 191 (1999). The act upheld was P.A. 89-21 (1995).
45. 187 Ill. 2d at 354, 718 N.E.2d at 199.
46. Premier Property Management, Inc. v. Chavez, 191 Ill. 2d 101, 728 N.E.2d 476 (2000). The act upheld was P.A. 90-514 (1997).
47. People v. Boclair, 202 Ill. 2d 89, 789 N.E.2d 734 (2002).
48. People ex rel. Kirk v. Lindberg, 59 Ill. 2d 38, 320 N.E.2d 17 (1974).
49. Benjamin v. Devon Bank, 68 Ill. 2d 142, 368 N.E.2d 878 (1977).
50. People ex rel. Kirk v. Lindberg, 59 Ill. 2d 38, 320 N.E.2d 17 (1974).
51. Continental Illinois Nat'l Bank & Trust Co. v. Zagel, 78 Ill. 2d 387, 401 N.E.2d 491 (1979).
52. People ex rel. Ogilvie v. Lewis, 49 Ill. 2d 476 at 488-489, 274 N.E.2d 87 at 95 (1971).
53. People ex rel. Kucharski v. Hiering, 49 Ill. 2d 304, 274 N.E.2d 61 (1971); United Private Detective & Security Ass'n v. City of Chicago, 62 Ill. 2d 506, 343 N.E.2d 453 (1976); People ex rel. City of Canton v. Crouch, 79 Ill. 2d 356, 403 N.E.2d 242 (1980).
54. People ex rel. City of Canton v. Crouch, 79 Ill. 2d at 377, 403 N.E.2d at 252, quoting from Jordan v. Metropolitan Sanitary Dist., 15 Ill. 2d 369, 155 N.E.2d 297 (1958).
55. Fuehrmeyer v. City of Chicago, 57 Ill. 2d 193, 311 N.E.2d 116 (1974); People ex rel. Peoria Civic Center Auth. v. Vonachen, 62 Ill. 2d 179, 340 N.E.2d 1 (1975).
56. Prudential Ins. Co. of America v. City of Chicago, 66 Ill. 2d 437, 362 N.E.2d 1021 (1977).
57. People v. Lloyd, 304 Ill. 23 at 101-103, 136 N.E. 505 at 535-36 (1922); People ex rel. Brenza v. Fleetwood, 413 Ill. 530 at 547-48, 109 N.E.2d 741 at 750-52 (1952); Apex Motor Fuel Co. v. Barrett, 20 Ill. 2d 395 at 399-400, 169 N.E.2d 769 at 772-773 (1960); People v. Chatman, 38 Ill. 2d 265 at 268-69, 230 N.E.2d 879 at 881-82 (1967) (facts very similar to the two hypothetical laws described in the text); People v. Bullard, 61 Ill. 2d 277 at 280-83, 335 N.E.2d 465 at 467-68 (1975); Pflugmacher v. Cosentino, 165 Ill. App. 3d 1083, 519 N.E.2d 1123 (1988), review denied by Ill. Sup. Ct.; People v. Reedy, 186 Ill. 2d 1, 708 N.E.2d 1114 at 1120-1121 (1999). A section of the Statute on Statutes (5 ILCS 70/6) deals generally with the topic of multiple amendatory acts on the same subject in one General Assembly, but does not directly address the specific issue described here.
58. People ex rel. Hines v. Baltimore & O.S.W. R.R., 366 Ill. 318 at 321-323, 8 N.E.2d 655 at 657 (1937).
59. See, for example, People ex rel. Martin v. Village of Oak Park, 372 Ill. 488 at 489, 24 N.E.2d 571 at 572 (1939); S. Buchsbaum & Co. v. Gordon, 389 Ill. 493 at 499, 59 N.E.2d 832 at 836 (1945); People ex rel. Cason v. Ring, 41 Ill. 2d 305 at 309, 242 N.E.2d 267 at 270 (1968).
60. See, for example, People ex rel. Cason v. Ring, 41 Ill. 2d at 310, 242 N.E.2d at 270 (1968).
61. County of Cook v. Renaissance Arcade and Bookstore, 122 Ill. 2d 123 at 149, 522 N.E.2d 73 at 84 (1988).
62. Fuehrmeyer v. City of Chicago, 57 Ill. 2d 193, 311 N.E.2d 116 (1974); Polich v. Chicago School Finance Auth., 79 Ill. 2d 188, 402 N.E.2d 247 (1980).
63. Geja's Cafe v. Metropolitan Pier & Exposition Auth., 153 Ill. 2d 239, 606 N.E.2d 1212 (1992).
64. See People ex rel. Kirk v. Lindberg, 59 Ill. 2d 38, 320 N.E.2d 17 (1974) and Benjamin v. Devon Bank, 68 Ill. 2d 142, 368 N.E.2d 878 (1977).
65. People ex rel. Klinger v. Howlett, 50 Ill. 2d 242, 278 N.E.2d 84 (1972).
66. People ex rel. City of Canton v. Crouch, 79 Ill. 2d 356, 403 N.E.2d 242 (1980).
67. Continental Illinois Nat'l Bank & Trust Co. v. Zagel, 78 Ill. 2d 387, 401 N.E.2d 491 (1979).
68. The proposal was sent to the voters by 78th General Assembly House Joint Resolution—Constitutional Amendment 7 (1973).
69. People ex rel. City of Canton v. Crouch, 79 Ill. 2d 356, 403 N.E.2d 242 (1980).
70. County of Kane v. Carlson, 116 Ill. 2d 186, 507 N.E.2d 482 (1987).
71. 5 ILCS 75/1.
72. The constitutional amendment was proposed by 88th General Assembly House Joint Resolution—Constitutional Amendment 35.
73. P.A. 88-597, Section 83 (1994), amending 5 ILCS 75/1 and 75/2, and adding 5 ILCS 75/2.1.
74. People ex rel. Klinger v. Howlett, 50 Ill. 2d 242, 278 N.E.2d 84 (1972); Mulligan v. Joliet Regional Port Dist., 123 Ill. 2d 303, 527 N.E.2d 1264 (1988); People v. Shumpert, 126 Ill. 2d 344, 533 N.E.2d 1106 (1989).
75. City of Springfield v. Allphin, 74 Ill. 2d 117, 384 N.E.2d 310 (1978).
76. People ex rel. AFSCME v. Walker, 61 Ill. 2d 112, 332 N.E.2d 401 (1975), involving such a situation, is not entirely clear on this point, but Attorney General's Opinion S-890 (1975 Ops. Atty. Gen., p. 77) reached the conclusion stated in the text, which also seems to be supported by the argument given by the court and summarized in the text.
77. See 5 ILCS 75/1 and 75/2; People ex rel. AFSCME v. Walker, 61 Ill. 2d 112, 332 N.E.2d 401 (1975).
78. People v. Kellick, 102 Ill. 2d 162, 464 N.E.2d 1037 (1984).
79. Winokur v. Bakalis, 84 Ill. App. 3d 922, 405 N.E.2d 1329 (1980), review denied by Ill. Sup. Ct.
80. Opinion S-1366 (1978 Ops. Atty. Gen., p. 125).
81. Quinn v. Donnewald, 107 Ill. 2d 179, 483 N.E.2d 216 (1985). The Act is codified in 25 ILCS 120/1 ff.
82. Rock v. Burris, 139 Ill. 2d 494, 564 N.E.2d 1240

(1990).
83. People v. Flinn, 47 Ill. App. 3d 357, 362 N.E.2d 3 (1977).
84. See Meyer v. McKeown, 266 Ill. App. 3d 324, 641 N.E.2d 1212 (1994), review denied by Ill. Sup. Ct. (involving statements by village trustee, but likely applicable to state legislators); Hutchinson v. Proxmire, 443 U.S. 111, 99 S. Ct. 2675 (1979) (applying the federal "Speech or Debate" clause to statements by a member of Congress outside the legislative process).
85. Illinois Housing Dev. Auth. v. Van Meter, 82 Ill. 2d 116, 412 N.E.2d 151 (1980); Harris v. Manor Healthcare Corp., 111 Ill. 2d 350, 489 N.E.2d 1374 (1986); Beeding v. Miller, 167 Ill. App. 3d 128, 520 N.E.2d 1058 (1988), review denied by Ill. Sup. Ct., cert. den. 489 U.S. 1097.
86. County of Bureau v. Thompson, 139 Ill. 2d 323 at 345-346, 564 N.E.2d 1170 at 1181-82 (1990).
87. Latham v. Board of Educ. of Chicago, 31 Ill. 2d 178, 201 N.E.2d 111 (1964); People v. Palkes, 52 Ill. 2d 472, 288 N.E.2d 469 (1972), app. dis. for lack of final judgment 411 U.S. 923; People ex rel. Kutner v. Cullerton, 58 Ill. 2d 266, 319 N.E.2d 55 (1974); Nevitt v. Langfelder, 157 Ill. 2d 116, 623 N.E.2d 281 (1993).
88. People ex rel. City of Danville v. Fox, 247 Ill. 402, 93 N.E. 302 (1910); In re Petition for Removal of Struck, 41 Ill. 2d 574, 244 N.E.2d 176 (1969); In re Belmont Fire Prot. Dist., 111 Ill. 2d 373, 489 N.E.2d 1385 (1986); In re Petition of Village of Vernon Hills, 168 Ill. 2d 117, 658 N.E.2d 365 (1995).
89. Anderson v. Wagner, 79 Ill. 2d 295, 402 N.E.2d 560 (1979), app. dis. 449 U.S. 807.
90. People ex rel. Skinner v. Hellmuth, Obata & Kassabaum, Inc., 114 Ill. 2d 252, 500 N.E.2d 34 (1986).
91. McAlister v. Schick, 147 Ill. 2d 84, 588 N.E.2d 1151 (1992). See also DeLuna v. St. Elizabeth's Hosp., 147 Ill. 2d 57, 588 N.E.2d 1139 (1992). These requirements are codified in 735 ILCS 5/2-622.
92. Northern Illinois Home Builders Ass'n v. County of Du Page, 165 Ill. 2d 25, 649 N.E.2d 384 (1995).
93. Miller v. Rosenberg, 196 Ill. 2d 50, 749 N.E.2d 946 (2001).
94. Best v. Taylor Machine Works, 179 Ill. 2d 367, 689 N.E.2d 1057 (1997).
95. Allen v. Woodfield Chevrolet, Inc., 208 Ill. 2d 12, 802 N.E.2d 752 (2003).
96. See Legislative Research Unit, "Impeachment in Illinois and Other Jurisdictions" (File 10-703, August 22, 1995) and "Articles Voted in 1833 Impeachment Proceedings" (File 10-833, April 22, 1997). The House in 1997 created a Special Investigative Committee to investigate the conduct of Supreme Court Chief Justice James D. Heiple (see 90th General Assembly H. Res. 89), but no impeachment occurred.
97. Rules of Special Investigative Committee of the 90th General Assembly Investigating Supreme Court Chief Justice James D. Heiple (filed April 29, 1997).
98. Cusack v. Howlett, 44 Ill. 2d 233, 254 N.E.2d 506 (1969).
99. People ex rel. Myers v. Lewis, 32 Ill. 2d 506, 207 N.E.2d 468 (1965).

Article 5. The Executive

1. American Legion Post 279 v. Barrett, 371 Ill. 78, 20 N.E.2d 45 (1939).
2. People ex rel. Gullett v. McCullough, 254 Ill. 9, 98 N.E. 156 (1912).
3. See People ex rel. Hoyne v. McCormick, 261 Ill. 413, 103 N.E. 1053 (1913) and its progeny, the most recent of which is Thies v. State Bd. of Elections, 124 Ill. 2d 317, 529 N.E.2d 565 (1988). These cases all involved judges, but the court stated broadly that where the qualifications for any office are set by the Constitution they may not be varied or added to by statute.
4. See 10 ILCS 5/7-59(a).
5. In re Contest of the Election for Governor and Lieutenant Governor, 93 Ill. 2d 463, 444 N.E.2d 170 (1983). The section involved (Ill. Rev. Stat. through 1987, ch. 46, secs. 23-1.1 ff.) was later repealed by P.A. 86-873, Section 9 (1989).
6. P.A. 86-873, Section 8 (1989); 10 ILCS 5/23-1.1a.
7. P.A. 82-105 (1981); 15 ILCS 5/1.
8. Supreme Court Rule 382.
9. 5 ILCS 275/1 ff.
10. Buettell v. Walker, 59 Ill. 2d 146, 319 N.E.2d 502 (1974).
11. Executive Order 73-4, requiring financial disclosure by state employees paid more than $20,000 per year, was upheld in Illinois State Employees' Ass'n v. Walker, 57 Ill. 2d 512, 315 N.E.2d 9 (1974), cert. den. 419 U.S. 1058, but the order apparently did not apply to persons not under the Governor's jurisdiction, and an existing statutory provision already imposed such a requirement on state employees paid more than $20,000 per year (see P.A. 77-1806 (1972). The provision as amended is in 5 ILCS 420/4A-101).
12. People ex rel. Dunham v. Morgan, 90 Ill. 558 at 565-66 (1878); People v. Chicago Transit Auth., 392 Ill. 77 at 97-98, 64 N.E.2d 4 at 14 (1945).
13. Walker v. State Bd. of Elections, 65 Ill. 2d 543, 359 N.E.2d 113 (1976).
14. King v. Lindberg, 63 Ill. 2d 159, 345 N.E.2d 474 (1976).
15. See 820 ILCS 305/13(b), first paragraph.
16. Ford v. Blagojevich, 260 F. Supp. 2d 700 (C.D. Ill. 2003).
17. Wilcox v. People ex rel. Lipe, 90 Ill. 186 (1878).
18. Lunding v. Walker, 65 Ill. 2d 516, 359 N.E.2d 96 (1976).
19. Humphrey's Executor v. United States, 295 U.S. 602, 55 S. Ct. 869 (1935); Wiener v. United States, 357 U.S. 349, 78 S. Ct. 1275 (1958).
20. Ford v. Blagojevich, 260 F. Supp. 2d 700 (C.D. Ill. 2003).
21. Illinois State Employees' Ass'n v. Walker, 57 Ill. 2d 512, 315 N.E.2d 9 (1974), cert. den. 419 U.S. 1058.
22. 5 U.S. Code secs. 901 ff.
23. 15 ILCS 15/1 ff.
24. 15 ILCS 15/9 and 15/10.
25. See Record of Proceedings, Sixth Illinois

Constitutional Convention, vol. VI, p. 390 (explanation of Proposal No. 1 of Executive Committee).
26. 730 ILCS 5/3-3-13.
27. People v. Glisson, 69 Ill. 2d 502, 372 N.E.2d 669 (1978). The statute is 20 ILCS 2630/5.
28. People ex rel. Madigan v. Snyder, 208 Ill. 2d 457, 804 N.E.2d 546 (2004).
29. 208 Ill. 2d at 480, 804 N.E.2d at 560.
30. See Legislative Research Unit, "Duties of the Lieutenant Governor" (File 10-638, January 10, 1995).
31. Fergus v. Russel, 270 Ill. 304 at 334-42, 110 N.E. 130 at 142-45 (1915).
32. Dept. of Mental Health v. Coty, 38 Ill. 2d 602, 232 N.E.2d 686 (1967).
33. Stein v. Howlett, 52 Ill. 2d 570, 289 N.E.2d 409 (1972), app. dis. 412 U.S. 925. The provision involved in the case (Ill. Rev. Stat. 1971 Supp., ch. 127, Section 604A-106) was deleted from the Act by P.A. 78-255, Section 64 (1973).
34. People ex rel. Scott v. Briceland, 65 Ill. 2d 485, 359 N.E.2d 149 (1976).
35. Fuchs v. Bidwill, 65 Ill. 2d 503, 359 N.E.2d 158 (1976).
36. Environmental Protection Agency v. Pollution Control Bd., 69 Ill. 2d 394, 372 N.E.2d 50 (1977).
37. Fair Employment Practices Comm'n v. Rush-Presbyterian-St. Luke's Medical Center, 41 Ill. App. 3d 712, 354 N.E.2d 596 (1976).
38. People v. Massarella, 72 Ill. 2d 531, 382 N.E.2d 262 (1978), cert. den. 442 U.S. 928; People v. Buffalo Confectionery Co., 78 Ill. 2d 447, 401 N.E.2d 546 (1980).
39. People ex rel. Hartigan v. E & E Hauling, 153 Ill. 2d 473, 607 N.E.2d 165 (1992).
40. Lyons v. Ryan, 201 Ill. 2d 529, 780 N.E.2d 1098 (2002).
41. Scott v. Cadagin, 65 Ill. 2d 477, 358 N.E.2d 1125 (1976).
42. People ex rel. Sklodowski v. State of Illinois, 162 Ill. 2d 117 at 127-28, 642 N.E.2d 1180 at 1183-84 (1994).
43. 15 ILCS 205/4, item Sixth.
44. City of Springfield v. Allphin, 74 Ill. 2d 117, 384 N.E.2d 310 (1978). See generally Scott, "The Role of Attorney General's Opinions in Illinois," 67 Northwest. Univ. L. Rev. 643 (1972).
45. See Legislative Research Unit, "Duties of the Illinois Secretary of State" (File 10-534, February 8, 1994) for a list of the Secretary of State's major duties and their statutory sources.
46. See Legislative Research Unit, "The Comptroller" (File 10-573, April 28, 1994).
47. Fairbank v. Stratton, 14 Ill. 2d 307, 152 N.E.2d 569 (1958).
48. See 30 ILCS 235/0.01 ff. and 15 ILCS 520/0.01 ff.
49. 15 ILCS 205/1.
50. 15 ILCS 405/3.
51. 5 ILCS 260/14.1 and 260/14.3.
52. Opinion S-1366 (1978 Ops. Atty. Gen., p. 125).
53. Quinn v. Donnewald, 107 Ill. 2d 179, 483 N.E.2d 216 (1985). The Act is in 25 ILCS 120/1 ff.
54. Ingemunson v. Hedges, 133 Ill. 2d 364, 549 N.E.2d 1269 (1990).

Article 6. The Judiciary

1. Small claims court is provided for in Supreme Court Rules 281 ff.
2. See Seifert v. Standard Paving Co., 64 Ill. 2d 109, 355 N.E.2d 537 (1976). The Court of Claims Act is in 705 ILCS 505/1 ff.
3. See also the discussion in People v. Joseph, 113 Ill. 2d 36 at 48-59, 495 N.E.2d 501 at 507-512 (Simon, J., dissenting).
4. People v. Jackson, 69 Ill. 2d 252, 371 N.E.2d 602 (1977).
5. In re Contest of Election for Offices of Governor and Lieutenant Governor, 93 Ill. 2d 463, 444 N.E.2d 170 (1983).
6. 725 ILCS 5/110-6.2(b).
7. People v. Williams, 143 Ill. 2d 477, 577 N.E.2d 762 (1991). The rule is Supreme Court Rule 609(b).
8. Administrative Office of the Illinois Courts v. State and Municipal Teamsters, 167 Ill. 2d 180, 657 N.E.2d 972 (1995).
9. People v. Heim, 182 Ill. App. 3d 1075, 538 N.E.2d 1259 (1989), review denied by Ill. Sup. Ct. 127 Ill. 2d 627, 545 N.E.2d 120; People v. Riley, 209 Ill. App. 3d 212, 568 N.E.2d 74 (1991), review denied by Ill. Sup. Ct. 137 Ill. 2d 670, 571 N.E.2d 153. The provisions involved have not been repealed; they are now cited as 725 ILCS 5/110-2 (last sentence), 5/110-5(e), and 5/110-6(g).
10. McAlister v. Schick, 147 Ill. 2d 84, 588 N.E.2d 1151 (1992); DeLuna v. St. Elizabeth's Hosp., 147 Ill. 2d 57, 588 N.E.2d 1139 (1992). The law is in 730 ILCS 5/2-622.
11. McAlister v. Schick, 147 Ill. 2d at 95-98, 588 N.E.2d at 1156-57.
12. 147 Ill. 2d at 100-102, 588 N.E.2d at 1158 (Cunningham, J., concurring).
13. Laws 1963, p. 929; 705 ILCS 20/0.01 ff. See the discussion later in the text of the General Assembly's unsuccessful attempts to redraw district lines in 1989 and 1997.
14. Reed v. Kusper, 154 Ill. 2d 77, 607 N.E.2d 1198 (1992), cert. den. 113 S. Ct. 3000. See also Norman v. Reed, 502 U.S. 279, 112 S. Ct. 698 (1992).
15. 10 ILCS 5/10-2, fourth paragraph.
16. People ex rel. Chicago Bar Ass'n v. State Bd. of Elections, 136 Ill. 2d 513, 558 N.E.2d 89 (1990).
17. Cincinnati Insurance Co. v. Chapman, 181 Ill. 2d 65, 691 N.E.2d 374 (1998).
18. Wells v. Edwards, 347 F. Supp. 453 (M.D. La. 1972), aff'd 409 U.S. 1095, 93 S. Ct. 904 (1973).
19. Supreme Court Rule 603.
20. Supreme Court Rule 302(a) (referring to Rule 21(c) on rulings to comply with administrative orders).
21. For some criteria that the court says it uses in deciding whether to hear civil appeals, see Supreme Court Rule 315(a).
22. People ex rel. Chicago Bar Ass'n v. State Bd. of Elections, 136 Ill. 2d 513, 558 N.E.2d 89 (1990).
23. Arlington City Cab Co. v. Regional Transp. Auth., 82

Ill. 2d 458, 413 N.E.2d 408 (1980).

24. Proctor v. Upjohn Co., 175 Ill. 2d 394, 677 N.E.2d 918 (1997); People v. Ortiz, 196 Ill. 2d 236, 752 N.E.2d 410 (2001).
25. See Mattis & Yalowitz, "Stare Decisis Among (Sic) the Appellate Court of Illinois," 28 De Paul L. Rev. 571 (1979); Renshaw v. General Tel. Co. of Illinois, 112 Ill. App. 3d 58, 445 N.E.2d 70 (1983).
26. See, among other cases, Garcia v. Hynes & Howes Real Estate, Inc., 29 Ill. App. 3d 479, 331 N.E.2d 634 (1975); People v. Spahr, 56 Ill. App. 3d 434, 371 N.E.2d 1261 (1978), review denied by Ill. Sup. Ct.; Glasco Electric Co. v. Department of Revenue, 87 Ill. App. 3d 1070, 409 N.E.2d 511 (1980), aff'd on other ground 86 Ill. 2d 346, 427 N.E.2d 90 (1981); People v. Boykin, 94 Ill. 2d 138 at 146, 445 N.E.2d 1174 at 1178 (1983); Sidwell v. Griggsville Comm. Sch. Dist., 208 Ill. App. 3d 296 at 299-300, 566 N.E.2d 838 at 840 (1991), aff'd 146 Ill. 2d 467, 588 N.E.2d 1185 (1992); Jachim v. Townsley, 249 Ill. App. 3d 878 at 882-83, 619 N.E.2d 1317 at 1320 (1993); Hinojosa v. Joslyn Corp., 262 Ill. App. 3d 673 at 675, 635 N.E.2d 546 at 548 (1994).
27. Jack Spring, Inc. v. Little, 50 Ill. 2d 351, 280 N.E.2d 208 (1972); Hamilton Corp. v. Alexander, 53 Ill. 2d 175, 290 N.E.2d 589 (1972).
28. Almgren v. Rush-Presbyterian-St. Luke's Medical Ctr., 162 Ill. 2d 205, 642 N.E.2d 1264 (1994).
29. 735 ILCS 5/3-101 ff.
30. 10 ILCS 5/9-22.
31. 735 ILCS 5/3-104.
32. 5 ILCS 315/11(e).
33. 775 ILCS 5/8-111.
34. 415 ILCS 5/41.
35. 220 ILCS 5/10-201.
36. Thies v. State Bd. of Elections, 124 Ill. 2d 317, 529 N.E.2d 565 (1988).
37. Supreme Court Rule 21.
38. Supreme Court Rule 295.
39. Grace v. Howlett, 51 Ill. 2d 478, 283 N.E.2d 474 (1972).
40. Wright v. Central Du Page Hosp. Ass'n, 63 Ill. 2d 313, 347 N.E.2d 736 (1976); Bernier v. Burris, 113 Ill. 2d 219, 497 N.E.2d 763 (1986).
41. Chicago Welfare Rights Organization v. Weaver, 56 Ill. 2d 33, 305 N.E.2d 140 (1973), app. dis., cert. den. 417 U.S. 962; Cypress Lounge v. Town of Cicero, 165 Ill. App. 3d 867, 520 N.E.2d 790 (1987).
42. LaSalle Nat'l Bank v. Hoffman, 1 Ill. App. 3d 470, 274 N.E.2d 640 (1971).
43. People v. NL Industries, Inc., 218 Ill. App. 3d 300, 578 N.E.2d 237 (1991) (actions for injunction can be brought in court), rev'd 152 Ill. 2d 82, 604 N.E.2d 349 (1992) (holding that actions to recover damages may also be brought in circuit court).
44. Board of Education v. Compton, 123 Ill. 2d 216, 526 N.E.2d 149 (1988).
45. Board of Educ. v. Warren Township High School Fed'n of Teachers, 128 Ill. 2d 155, 538 N.E.2d 524 (1989).
46. See, for example, In re Marriage of Peshek, 89 Ill. App. 3d 959 at 967, 412 N.E.2d 698 at 704 (1980); In re Estate of Zoglauer, 229 Ill. App. 3d 394, 593 N.E.2d 93 (1992); Droen v. Wechsler, 271 Ill. App. 3d 332, 648 N.E.2d 981 (1995).
47. People ex rel. Hoyne v. McCormick, 261 Ill. 413, 103 N.E. 1053 (1913); Cusack v. Howlett, 44 Ill. 2d 233, 254 N.E.2d 506 (1969); Thies v. State Bd. of Elections, 124 Ill. 2d 317, 529 N.E.2d 565 (1988).
48. Those provisions were added by P.A. 85-866 and P.A. 85-903, Section 1 (both 1987). They were deleted by P.A. 87-410, Section 1002 (1991). See now 705 ILCS 35/2c.
49. Thies v. State Bd. of Elections, 124 Ill. 2d 317, 529 N.E.2d 565 (1988).
50. Phelan v. County Officers Electoral Board, 240 Ill. App. 3d 368, 608 N.E.2d 215 (1992), rev'd 158 Ill. 2d 391, 634 N.E.2d 712 (1994).
51. Bonaguro v. County Officers Electoral Board, 158 Ill. 2d 391, 634 N.E.2d 712 (1994). A concurring opinion representing the views of three judges argued that the Appellate Court panel's decision was constitutionally incorrect because subSection 12(a) allows judges to be nominated only at elections or by petition (158 Ill. 2d at 402-403, 634 N.E.2d at 717 (concurring opinion of Heiple, J., joined by Bilandic and Nickels, JJ.).
52. 10 ILCS 5/7-61, ninth lettered paragraph, along with 10 ILCS 5/7-7 and 5/7-8.
53. Lefkovits v. State Board of Elections, 400 F. Supp. 1005 (N.D. Ill. 1975), aff'd without opinion 424 U.S. 901 (1976).
54. Supreme Court Rules 61 to 71.
55. Quinn v. Donnewald, 107 Ill. 2d 179, 483 N.E.2d 216 (1985). The Act is in 25 ILCS 120/1 ff.
56. People ex rel. Cosentino v. Adams County, 82 Ill. 2d 565, 413 N.E.2d 870 (1980).
57. See Factor v. Factor, 27 Ill. App. 3d 594, 327 N.E.2d 396 (1975).
58. Grace v. Howlett, 51 Ill. 2d 478, 283 N.E.2d 474 (1972).
59. Factor v. Factor, 27 Ill. App. 3d 594, 327 N.E.2d 396 (1975).
60. Anderson v. Anderson, 42 Ill. App. 3d 781, 356 N.E.2d 788 (1976), review denied by Ill. Sup. Ct. 378 N.E.2d 1079.
61. Trafelet v. Thompson, 594 F.2d 623 (7th Cir. 1979), cert. den. 444 U.S. 906.
62. P.A. 82-504 (1981); see now 705 ILCS 55/1.
63. Anagnost v. Layhe, 230 Ill. App. 3d 540, 595 N.E.2d 109 (1992).
64. The constitutional amendment was proposed by 90th General Assembly SJR 52 (1998).
65. Owen v. Mann, 105 Ill. 2d 525, 475 N.E.2d 886 (1985).
66. In re petition of Illinois Judicial Inquiry Bd., 128 Ill. App. 3d 798, 471 N.E.2d 601 (1984).
67. People ex rel. Harrod v. Illinois Courts Comm'n, 69 Ill. 2d 445, 372 N.E.2d 53 (1977).
68. People ex rel. Judicial Inquiry Bd. v. Courts Comm'n, 91 Ill. 2d 130, 435 N.E.2d 486 (1982).
69. People ex rel. Illinois Judicial Inquiry Bd. v. Hartel, 72 Ill. 2d 225, 380 N.E.2d 801 (1978), cert. den. 440 U.S. 915.
70. Brokaw Hospital v. Circuit Court of McLean County,

52 Ill. 2d 182, 287 N.E.2d 472 (1972); People ex rel. Ward v. Moran, 54 Ill. 2d 552, 301 N.E.2d 300 (1973); People v. Breen, 62 Ill. 2d 323, 342 N.E.2d 31 (1976); Crane Paper Stock Co. v. Chicago & N.W. R.R., 63 Ill. 2d 61, 344 N.E.2d 461 (1976); People v. Woolsey, 139 Ill. 2d 157, 564 N.E.2d 764 (1990); McDunn v. Williams, 156 Ill. 2d 288, 620 N.E.2d 385 (1993).

71. People v. Jackson, 69 Ill. 2d 252, 371 N.E.2d 602 (1977); In re Marriage of Lentz, 79 Ill. 2d 400, 403 N.E.2d 1036 (1980).
72. See Shutes v. Fowler, 223 Ill. App. 3d 342, 584 N.E.2d 920 (1991), review denied by Ill. Sup. Ct. The rule involved is Supreme Court Rule 224.
73. Supreme Court Rule 41.
74. Supreme Court Rule 42.
75. 10 ILCS 5/2A-15.
76. Drury v. County of McLean, 89 Ill. 2d 417, 433 N.E.2d 666 (1982).
77. People ex rel. Bier v. Scholz, 77 Ill. 2d 12, 394 N.E.2d 1157 (1979).
78. Orenic v. State Labor Relations Bd., 127 Ill. 2d 453, 537 N.E.2d 784 (1989).
79. See 55 ILCS 5/3-9005; Opinion S-863 (1975 Ops. Atty. Gen., p. 12).
80. 55 ILCS 5/3-9010.
81. Ingemunson v. Hedges, 133 Ill. 2d 364, 549 N.E.2d 1269 (1990).

Article 7. Local Government

1. Dillon, Law of Municipal Corporations (5th ed. 1911), vol. 1, Section 237. This rule has been stated in Illinois cases such as Littell v. City of Peoria, 374 Ill. 344, 29 N.E.2d 533 (1940); Heidenreich v. Ronske, 26 Ill. 2d 360, 187 N.E.2d 261 (1962); Norwick v. Village of Winfield, 81 Ill. App. 2d 197, 225 N.E.2d 30 (1967), review denied by Ill. Sup. Ct.; and T & S Signs v. Village of Wadsworth, 261 Ill. App. 3d 1080 at 1086, 634 N.E.2d 306 at 310 (1994) (non-home-rule unit).
2. People ex rel. Hanrahan v. Caliendo, 50 Ill. 2d 72, 277 N.E.2d 319 (1971), app. dis. 406 U.S. 965; Chicago Transit Auth. v. Danaher, 40 Ill. App. 3d 913, 353 N.E.2d 97 (1976).
3. Opinion S-601 (1973 Ops. Atty. Gen., p. 102) said a public health district with authority to levy an annual tax is a unit of local government; Opinion S-602 (1973 Ops. Atty. Gen., p. 108) said a county or multi-county health department is not. Opinion S-885 (1975 Ops. Atty. Gen., p. 59) said hospital districts are; Opinion S-1361 (1978 Ops. Atty. Gen., p. 115) said boards of trustees of police pension funds are not; Opinion 81-012 (1981 Ops. Atty. Gen., p. 27) said local library districts are.
4. League of Women Voters v. County of Peoria, 121 Ill. 2d 236, 520 N.E.2d 626 (1987).
5. 55 ILCS 5/2-3001 ff. (counties under 3 million population); 55 ILCS 5/2-6001 ff. (Cook County).
6. Illinois Constitution of 1870, art. 10, Section 6; Illinois Constitution of 1970, Transition Schedule, subSection 5(a).
7. Sutton v. Dunne, 365 F. Supp. 483 (N.D. Ill. 1973).
8. Sutton v. Dunne, 529 F. Supp. 312 (N.D. Ill. 1981), aff'd 681 F.2d 484 (7th Cir. 1982), cert. den. 460 U.S. 1081.
9. 55 ILCS 5/2-5001 ff.
10. 55 ILCS 5/2-5005. An Illinois Appellate Court panel upheld the constitutionality of this law in Richardson v. Mulcahey, 265 Ill. App. 3d 123, 637 N.E.2d 1217 (1994).
11. People ex rel. Hanrahan v. Beck, 54 Ill. 2d 561, 301 N.E.2d 281 (1973).
12. Chicago Bar Ass'n v. County of Cook, 102 Ill. 2d 438, 467 N.E.2d 580 (1984).
13. Opinion S-1126 (1976 Ops. Atty. Gen., p. 241).
14. Taylor v. County of St. Clair, 57 Ill. 2d 367, 312 N.E.2d 231 (1974).
15. People ex rel. Rudman v. Rini, 64 Ill. 2d 321, 356 N.E.2d 4 (1976).
16. People ex rel. Walsh v. Board of Comm'rs of Cook County, 397 Ill. 293, 74 N.E.2d 503 (1947).
17. Record of Proceedings, Sixth Illinois Constitutional Convention, vol. VII, p. 1711 (discussion of Local Government Committee Majority Proposal).
18. 70 ILCS 605/4-36 (drainage district) and 60 ILCS 15/1 (township completely within a city of over 50,000). The latter act in effect merges such a township into the county government.
19. For a discussion of statutes on eliminating or consolidating townships and other kinds of local governments, see Legislative Research Unit, "Local Government Consolidation in Illinois" (File 10-646, February 3, 1995).
20. 60 ILCS 5/3-5.
21. Springfield Lakeshore Improvement Ass'n v. City of Springfield, 62 Ill. 2d 173, 340 N.E.2d 289 (1975); Henke v. City of Zion, 63 Ill. 2d 46, 344 N.E.2d 466 (1976).
22. Dillon, Law of Municipal Corporations (5th ed. 1911), vol. 1, Section 237.
23. Kanellos v. County of Cook, 53 Ill. 2d 161, 290 N.E.2d 240 (1972); People ex rel. Hanrahan v. Beck, 54 Ill. 2d 561, 301 N.E.2d 281 (1973); Winokur v. Rosewell, 83 Ill. 2d 92, 414 N.E.2d 724 (1980).
24. Rozner v. Korshak, 55 Ill. 2d 430, 303 N.E.2d 389 (1973); Mulligan v. Dunne, 61 Ill. 2d 544, 338 N.E.2d 6 (1975), cert. den. 425 U.S. 916; City of Evanston v. Create, Inc., 85 Ill. 2d 101, 421 N.E.2d 196 (1981). See also 5 ILCS 70/7.
25. City of Carbondale v. Van Natta, 61 Ill. 2d 483, 338 N.E.2d 19 (1975); City of Urbana v. Houser, 67 Ill. 2d 268, 367 N.E.2d 692 (1977).
26. Mulligan v. Dunne, 61 Ill. 2d 544, 338 N.E.2d 6 (1975), cert. den. 425 U.S. 916.
27. S. Bloom, Inc. v. Korshak, 52 Ill. 2d 56, 284 N.E.2d 257 (1972).
28. Paper Supply Co. v. City of Chicago, 57 Ill. 2d 553, 317 N.E.2d 3 (1974).
29. Rozner v. Korshak, 55 Ill. 2d 430, 303 N.E.2d 389 (1973) and Gilligan v. Korzen, 56 Ill. 2d 387, 308 N.E.2d 613 (1974), cert. den. 419 U.S. 841.
30. Jacobs v. City of Chicago, 53 Ill. 2d 421, 292 N.E.2d 401 (1973).
31. Williams v. City of Chicago, 66 Ill. 2d 423, 362

N.E.2d 1030 (1977), cert. den. 434 U.S. 924.
32. Town of Cicero v. Fox Valley Trotting Club, Inc., 65 Ill. 2d 10, 357 N.E.2d 1118 (1976); Kerasotes Rialto Theater Corp. v. City of Peoria, 77 Ill. 2d 491, 397 N.E.2d 790 (1979).
33. See Sommer v. Village of Glenview, 79 Ill. 2d 383, 403 N.E.2d 258 (1980), in which even a local referendum authorized by statute was held not to limit the tax rate that could be levied by a home-rule unit.
34. Municipalities: 65 ILCS 5/8-11-6a (with "grandfather" provisions to deal with such taxes that were already in existence). Counties: 55 ILCS 5/5-1009.
35. Commercial Nat'l Bank v. City of Chicago, 89 Ill. 2d 45, 432 N.E.2d 227 (1982).
36. Waukegan Comm. Unit Sch. Dist. 60 v. City of Waukegan, 95 Ill. 2d 244, 447 N.E.2d 345 (1983).
37. Bridgman v. Korzen, 54 Ill. 2d 74, 295 N.E.2d 9 (1972).
38. Ampersand, Inc. v. Finley, 61 Ill. 2d 537, 338 N.E.2d 15 (1975).
39. Board of Ed., Sch. Dist. No. 150 v. City of Peoria, 76 Ill. 2d 469, 394 N.E.2d 399 (1979).
40. Chicago Park Dist. v. City of Chicago, 111 Ill. 2d 7, 488 N.E.2d 968 (1986).
41. People v. Valentine, 50 Ill. App. 3d 447, 365 N.E.2d 1082 (1977).
42. Opinion 82-036 (1982 Ops. Atty. Gen., p. 108).
43. P.A. 81-212 (1979, eff. January 1, 1980). See now 235 ILCS 5/6-18.
44. Illinois Liquor Control Comm'n v. City of Joliet, 26 Ill. App. 3d 27, 324 N.E.2d 453 (1975); Illinois Liquor Control Comm'n v. Calumet City, 28 Ill. App. 3d 279, 328 N.E.2d 153 (1975).
45. Aurora Pizza Hut, Inc. v. Hayter, 79 Ill. App. 3d 1102, 398 N.E.2d 1150 (1979), review denied by Ill. Sup. Ct. (ordinance requiring manager of liquor licensee to reside in city).
46. Quilici v. Village of Morton Grove, 532 F. Supp. 1169 (N.D. Ill. 1981), aff'd 695 F.2d 261 (7th Cir. 1982), cert. den. 464 U.S. 863; Kalodimos v. Village of Morton Grove, 103 Ill. 2d 483, 470 N.E.2d 266 (1984); Sklar v. Byrne, 727 F.2d 633 (7th Cir. 1984). City of Quincy v. Daniels, 246 Ill. App. 3d 792, 615 N.E.2d 839 (1993).
47. City of Quincy v. Daniels, 246 Ill. App. 3d 792, 615 N.E.2d 839 (1993).
48. Landry v. Smith, 66 Ill. App. 3d 616, 384 N.E.2d 430 (1978); City of Evanston v. Create, Inc., 85 Ill. 2d 101, 421 N.E.2d 196 (1981); Oak Park Trust & Sav. Bank v. Village of Mount Prospect, 181 Ill. App. 3d 10, 536 N.E.2d 763 (1989), review denied by Ill. Sup. Ct. 127 Ill. 2d 621, 545 N.E.2d 115; Reed v. Burns, 238 Ill. App. 3d 148, 606 N.E.2d 152 (1992).
49. Wes Ward Enterprises, Ltd. v. Andrews, 42 Ill. App. 3d 458, 355 N.E.2d 131 (1976); Clevenger v. City of East Moline, 44 Ill. App. 3d 168, 357 N.E.2d 719 (1976).
50. Rothner v. City of Chicago, 66 Ill. App. 3d 428, 383 N.E.2d 1218 (1978), review denied by Ill. Sup. Ct.
51. City of Chicago v. Pioneer Towing, Inc., 73 Ill. App. 3d 867, 392 N.E.2d 132 (1979).
52. Scadron v. City of Des Plaines, 153 Ill. 2d 164, 606 N.E.2d 1154 (1992).
53. Kanellos v. County of Cook, 53 Ill. 2d 161, 290 N.E.2d 240 (1972).
54. Marshall Field & Co. v. Village of South Barrington, 92 Ill. App. 3d 360, 415 N.E.2d 1277 (1981).
55. Clarke v. Village of Arlington Heights, 57 Ill. 2d 50, 309 N.E.2d 576 (1974).
56. Boytor v. City of Aurora, 81 Ill. 2d 308, 410 N.E.2d 1 (1980).
57. Pechous v. Slawko, 64 Ill. 2d 576, 357 N.E.2d 1144 (1976).
58. Marshall v. City of Chicago Heights, 59 Ill. App. 3d 986, 376 N.E.2d 657 (1978).
59. Chicago Bar Ass'n v. County of Cook, 102 Ill. 2d 438, 467 N.E.2d 580 (1984).
60. Allen v. County of Cook, 65 Ill. 2d 281, 357 N.E.2d 458 (1976).
61. Dunne v. County of Cook, 108 Ill. 2d 161, 483 N.E.2d 13 (1985).
62. Dunne v. County of Cook, 164 Ill. App. 3d 929, 518 N.E.2d 380 (1987), review denied by Ill. Sup. Ct.
63. Stryker v. Village of Oak Park, 62 Ill. 2d 523, 343 N.E.2d 919 (1976), cert. den. 429 U.S. 832.
64. Peters v. City of Springfield, 57 Ill. 2d 142, 311 N.E.2d 107 (1974).
65. Mandarino v. Village of Lombard, 92 Ill. App. 3d 78, 414 N.E.2d 508 (1980), review denied by Ill. Sup. Ct.; Resman v. Personnel Bd. of City of Chicago, 96 Ill. App. 3d 919, 422 N.E.2d 120 (1981), review denied by Ill. Sup. Ct.
66. Kadzielawski v. Board of Fire & Police Comm'rs of Skokie, 194 Ill. App. 3d 676, 551 N.E.2d 331 (1990), review denied by Ill. Sup. Ct.
67. Dalton v. City of Moline, 48 Ill. App. 3d 494, 359 N.E.2d 500 (1978).
68. People ex rel. Bernardi v. City of Highland Park, 121 Ill. 2d 1, 520 N.E.2d 316 (1988).
69. See Public Acts 78-1208 through 78-1232 (1974); United Private Detective & Security Ass'n v. City of Chicago, 62 Ill. 2d 506, 343 N.E.2d 453 (1976); Andruss v. City of Evanston, 68 Ill. 2d 215, 369 N.E.2d 1258 (1977), cert. den. 435 U.S. 952.
70. See 235 ILCS 5/6-18.
71. See 5 ILCS 120/6.
72. Hutchcraft Van Service, Inc. v. City of Urbana Human Relations Comm'n, 104 Ill. App. 3d 817, 433 N.E.2d 329 (1982), review denied by Ill. Sup. Ct.; Kirwin v. Peoples Gas Light and Coke Co., 173 Ill. App. 3d 699, 528 N.E.2d 201 (1988), review denied by Ill. Sup. Ct.
73. City of Peoria v. Peoria Water Co., 49 Ill. App. 3d 1066, 364 N.E.2d 1003 (1977), review denied by Ill. Sup. Ct.; Village of Dolton ex rel. Winter v. CSX Transportation, Inc., 196 Ill. App. 3d 564, 554 N.E.2d 440 (1990).
74. 5 ILCS 70/7. This statute applies to any law enacted after January 12, 1977. Court decisions, including those cited in the next note, also applied the principle to earlier laws.
75. Stryker v. Village of Oak Park, 62 Ill. 2d 523 at 528, 343 N.E.2d 919 at 923 (1976), cert. den. 429 U.S. 832; City of Evanston v. Create, Inc., 85 Ill. 2d 101, 421 N.E.2d 196 (1981); Scadron v. City of Des Plaines, 153 Ill. 2d 164 at 186-188, 606 N.E.2d 1154 at 1163-

1165 (1992). See also the following note.

76. Village of Bolingbrook v. Citizens Utility Co., 158 Ill. 2d 133, 632 N.E.2d 1000 (1994); City of Chicago v. Roman, 184 Ill. 2d 504 at 515-520, 705 N.E.2d 81 at 88-90 (1998).
77. People ex rel. Bernardi v. City of Highland Park, 121 Ill. 2d 1, 520 N.E.2d 316 (1988). The Act is now in 820 ILCS 130/0.01 ff.
78. Kirwin v. Peoples Gas Light and Coke Co., 173 Ill. App. 3d 699, 528 N.E.2d 201 (1988), review denied by Ill. Sup. Ct.
79. See Record of Proceedings, Sixth Illinois Constitutional Convention, vol. VII, p. 1578 (Local Government Committee Majority Proposal, Section 3.2) and vol. IV, pp. 3110-3119, 3089-3105, and 3326-3360 (discussion and votes on amendments to Section 3.2). The apparent confusion evidenced by the debate makes any firm conclusion about the intent of the convention on this point impossible.
80. Nevitt v. Langfelder, 157 Ill. 2d 116 at 136-138, 623 N.E.2d 281 at 290-291 (1993) might seem to answer this question, since it said a statutory requirement that most home-rule units make payments to firefighters and others injured on the job "represents an exercise of power by the State" and thus did not need to be enacted under subSection 6(g) (requiring a three-fifths majority). But the court in that opinion also pointed out that this statutory requirement explicitly applies to state employees, and thus "involves a power or function that is being exercised or performed by the State." Furthermore, the act imposing this requirement on home-rule units (P.A. 85-1393, Section 5 (1988)) was passed by more than a three-fifths majority in each house anyway. See final Legislative Synopsis and Digest, 85th General Assembly, 1988 session, pp. 1589-1590. The statute involved is now found in 5 ILCS 345/1. Curiously, in Application of County Collector v. American Nat'l Bank & Trust Co., 132 Ill. 2d 64 at 77-79, 547 N.E.2d 107 at 113 (1989), the court appeared to say that the General Assembly could not change the procedures of home-rule units, without even mentioning the majority by which the law involved was passed in each house (which in fact was more than three-fifths).
81. McLorn v. City of East St. Louis, 105 Ill. App. 3d 148, 434 N.E.2d 44 (1982), review denied by Ill. Sup. Ct.
82. 55 ILCS 5/2-5001 ff.
83. Mulligan v. Dunne, 61 Ill. 2d 544, 338 N.E.2d 6 (1975), cert. den. 425 U.S. 916 (comments in case actually involving Cook County); Wes Ward Enterprises, Ltd. v. Andrews, 42 Ill. App. 3d 458, 355 N.E.2d 131 (1976).
84. 65 ILCS 5/1-1-9.
85. Village of Bolingbrook v. Citizens Utilities Co., 158 Ill. 2d 133 at 139, 632 N.E.2d 1000 at 1002-3 (1994), quoting from Kalodimos v. Village of Morton Grove, 103 Ill. 2d 483 at 501, 470 N.E.2d 266 at 274 (1984).
86. City of Evanston v. County of Cook, 53 Ill. 2d 312, 291 N.E.2d 823 (1972).
87. City of Highland Park v. Cook County, 37 Ill. App. 3d 15, 344 N.E.2d 665 (1975).
88. City of Carbondale v. Van Natta, 61 Ill. 2d 483 at 485, 338 N.E.2d 19 at 22-23 (1975); Commercial Nat. Bank v. City of Chicago, 89 Ill. 2d 45 at 77-79, 432 N.E.2d 227 at 242-243 (1982). See also Village of Sauget v. Cohn, 241 Ill. App. 3d 640 at 645-646, 610 N.E.2d 104 at 108 (1993), review denied by Ill. Sup. Ct.
89. See 65 ILCS 5/11-13-1, third paragraph.
90. City of Springfield v. Ushman, 71 Ill. App. 3d 112, 388 N.E.2d 1357 (1979).
91. Waukegan Comm. Unit Sch. Dist. 60 v. City of Waukegan, 95 Ill. 2d 244, 447 N.E.2d 345 (1983).
92. 65 ILCS 5/8-11-2. The court in the Waukegan case specifically so held.
93. Commercial Nat'l Bank v. City of Chicago, 89 Ill. 2d 45, 432 N.E.2d 227 (1982).
94. Chicago Health Clubs, Inc., v. Picur, 124 Ill. 2d 1, 528 N.E.2d 978 (1988).
95. Estate of Carey v. Village of Stickney, 81 Ill. 2d 3406, 411 N.E.2d 209 (1980).
96. See Clarke v. Village of Arlington Heights, 57 Ill. 2d 50, 309 N.E.2d 576 (1974); Pechous v. Slawko, 64 Ill. 2d 576, 357 N.E.2d 1144 (1976); Marshall v. City of Chicago Heights, 59 Ill. App. 3d 986, 376 N.E.2d 657 (1978); and Boytor v. City of Aurora, 81 Ill. 2d 308, 410 N.E.2d 1 (1980).
97. See Allen v. County of Cook, 65 Ill. 2d 281, 357 N.E.2d 458 (1976) and Dunne v. County of Cook, 108 Ill. 2d 161, 483 N.E.2d 13 (1985).
98. Leck v. Michaelson, 111 Ill. 2d 523, 491 N.E.2d 414 (1986).
99. Paglini v. Police Bd. of Chicago, 61 Ill. 2d 233, 335 N.E.2d 480 (1975).
100. Stryker v. Village of Oak Park, 62 Ill. 2d 523, 343 N.E.2d 919 (1976), cert. den. 429 U.S. 832.
101. Aurora Pizza Hut, Inc. v. Hayter, 79 Ill. App. 3d 1102, 398 N.E.2d 1150 (1979), review denied by Ill. Sup. Ct.
102. Illinois Liquor Control Comm'n v. City of Joliet, 26 Ill. App. 3d 27, 324 N.E.2d 453 (1975); Illinois Liquor Control Comm'n v. Calumet City, 28 Ill. App. 3d 279, 328 N.E.2d 153 (1975).
103. See 235 ILCS 5/6-18.
104. Malito v. Marcin, 14 Ill. App. 3d 658, 303 N.E.2d 262 (1973), review denied by Ill. Sup. Ct. 55 Ill. 2d 602, app. dis. 417 U.S. 963; Hall v. Marcin, 49 Ill. App. 3d 528, 364 N.E.2d 549 (1977), review denied by Ill. Sup. Ct.; Duncan v. Marcin, 82 Ill. App. 3d 963, 403 N.E.2d 653 (1980), review denied by Ill. Sup. Ct.; Seals v. City of Chicago, 93 Ill. App. 3d 678, 417 N.E.2d 843 (1981).
105. Sommer v. Village of Glenview, 79 Ill. 2d 383, 403 N.E.2d 258 (1980).
106. See City of Chicago v. Pollution Control Bd., 59 Ill. 2d 484, 322 N.E.2d 11 (1974) and County of Cook v. John Sexton Contrs. Co., 75 Ill. 2d 494, 389 N.E.2d 553 (1979) (home-rule units); County of Kendall v. Avery Gravel Co., 101 Ill. 2d 428, 463 N.E.2d 723 (1984) (non-home-rule unit). On the frequent issue of siting for new "pollution control facilities," see also 415 ILCS 5/39.2(g).
107. Metropolitan Sanitary Dist. v. City of Des Plaines, 63 Ill. 2d 256, 347 N.E.2d 716 (1976), discussed in County of Cook v. John Sexton Contrs. Co., 75 Ill. 2d

494, 389 N.E.2d 553 (1979).
108. City of Des Plaines v. Chicago & N.W. Ry., 65 Ill. 2d 1, 357 N.E.2d 433 (1976), discussed in County of Cook v. John Sexton Contrs. Co., 75 Ill. 2d 494, 389 N.E.2d 553 (1979).
109. Village of Bolingbrook v. Citizens Utilities Co., 158 Ill. 2d 133, 632 N.E.2d 1000 (1994).
110. County of Cook v. John Sexton Contrs. Co., 75 Ill. 2d 494, 389 N.E.2d 553 (1979).
111. O'Connor v. City of Rockford, 52 Ill. 2d 360, 288 N.E.2d 432 (1972); Carlson v. Village of Worth, 62 Ill. 2d 406, 343 N.E.2d 493 (1975), reaffirmed as to non-home-rule units in County of Cook v. John Sexton Contrs. Co., 75 Ill. 2d 494, 389 N.E.2d 553 (1979).
112. 415 ILCS 5/39.2.
113. 415 ILCS 5/39(c).
114. Village of Carpentersville v. Pollution Control Board, 135 Ill. 2d 463, 553 N.E.2d 362 (1990).
115. See County of Cook v. John Sexton Contrs. Co., 75 Ill. 2d 494, 389 N.E.2d 553 (1979); Scandroli v. City of Rockford, 86 Ill. App. 3d 999 at 1002, 408 N.E.2d 436 at 439 (1980); Thompson v. Cook County Zoning Bd. of Appeals, 96 Ill. App. 3d 561 at 569, 421 N.E.2d 285 at 292 (1981), review denied by Ill. Sup. Ct.
116. Wilmette Park Dist. v. Village of Wilmette, 112 Ill. 2d 6, 490 N.E.2d 1282 (1986).
117. Village of Swansea v. County of St. Clair, 45 Ill. App. 3d 184, 359 N.E.2d 866 (1977).
118. Lake County Public Building Comm'n v. City of Waukegan, 273 Ill. App. 3d 15, 652 N.E.2d 370 (1995).
119. City of Highland Park v. County of Cook, 37 Ill. App. 3d 15, 344 N.E.2d 665 (1975); Village of Oak Brook v. County of Du Page, 173 Ill. App. 3d 490, 527 N.E.2d 1066 (1988).
120. City of Evanston v. Regional Transportation Authority, 202 Ill. App. 3d 265, 559 N.E.2d 899 (1990), review denied by Ill. Sup. Ct.
121. Kanellos v. County of Cook, 53 Ill. 2d 161, 290 N.E.2d 240 (1972).
122. Oak Park Fed. Sav. & Loan Ass'n v. Village of Oak Park, 54 Ill. 2d 200, 296 N.E.2d 344 (1973).
123. Coryn v. City of Moline, 71 Ill. 2d 194, 374 N.E.2d 211 (1978). Those statutory provisions are now in 35 ILCS 200/27-5 ff.
124. On the other hand, see the long discussion in Andrews v. County of Madison, 54 Ill. App. 3d 343 at 348-352, 369 N.E.2d 532 at 537-540 (1977), review denied by Ill. Sup. Ct. of why these powers should be co-extensive with the corresponding powers of home-rule units.
125. League of Women Voters v. County of Peoria, 121 Ill. 2d 236, 520 N.E.2d 626 (1987), citing Clarke v. Village of Arlington Heights, 57 Ill. 2d 50, 309 N.E.2d 576 (1974).
126. Williamson v. Doyle, 103 Ill. App. 3d 770, 431 N.E.2d 1198 (1981).
127. Koerner v. Municipal Officers Electoral Board of Coal City, 205 Ill. App. 3d 54, 562 N.E.2d 1107 (1990), review denied by Ill. Sup. Ct.
128. Wilmette Park Dist. v. Village of Wilmette, 112 Ill. 2d 6, 490 N.E.2d 1272 (1986).
129. Saltiel v. Olsen, 77 Ill. 2d 23, 394 N.E.2d 1197 (1979); on remand, Schlessinger v. Olsen, 107 Ill. App. 3d 302, 437 N.E.2d 768 (1982).
130. Flynn v. Kucharski, 45 Ill. 2d 211, 258 N.E.2d 329 (1970), 49 Ill. 2d 7, 273 N.E.2d 3 (1971), and 53 Ill. 2d 88, 290 N.E.2d 1 (1972); City of Joliet v. Bosworth, 64 Ill. 2d 516, 356 N.E.2d 543 (1976); Goldstein v. Rosewell, 65 Ill. 2d 325, 357 N.E.2d 1157 (1976).
131. DeBruyn v. Elrod, 84 Ill. 2d 128, 418 N.E.2d 413 (1981).
132. Gadeikis v. Yourell, 169 Ill. App. 3d 1033, 523 N.E.2d 1176 (1988), review denied by Ill. Sup. Ct.
133. Opinion S-963 (1975 Ops. Atty. Gen., p. 221).
134. Board of Comm'rs of Wood Dale Public Library Dist. v. County of Du Page, 96 Ill. 2d 378, 450 N.E.2d 332 (1983).
135. Village of Pawnee v. Johnson, 103 Ill. 2d 411, 469 N.E.2d 1365 (1984).
136. Little v. East Lake Fork Special Drainage Dist., 166 Ill. App. 3d 209, 519 N.E.2d 1113 (1988), review denied by Ill. Sup. Ct.
137. Harlan v. Sweet, 139 Ill. 2d 390, 564 N.E.2d 1192 (1990).
138. Dalton v. City of Moline, 48 Ill. App. 3d 494, 359 N.E.2d 500 (1977).
139. Winokur v. Rosewell, 83 Ill. 2d 92, 414 N.E.2d 724 (1980).
140. Winokur v. Bakalis, 84 Ill. App. 3d 922, 405 N.E.2d 1329 (1980), review denied by Ill. Sup. Ct.
141. Opinions S-777 (1974 Ops. Atty. Gen., p. 184), S-1006 (1975 Ops. Atty. Gen., p. 318), and S-1366 (1978 Ops. Atty. Gen., p. 125).
142. See especially Opinion S-639 (1973 Ops. Atty. Gen., p. 171) (circuit court clerk is not local officer under this section) and Opinion S-1441 (1979 Ops. Atty. Gen., p. 78) (prohibition on change of salary during term still applies even if officer resigns and a replacement completes the term).
143. Ingemunson v. Hedges, 133 Ill. 2d 364, 549 N.E.2d 1269 (1990). The specially concurring opinion reflecting the views of Miller and Calvo, JJ. based the same conclusion on the fact that Art. 6, Section 19 says of each state's attorney "His salary shall be provided by law" without mentioning any restriction on changes during a term (133 Ill. 2d at 371-73, 549 N.E.2d at 1272-1273).
144. 5 ILCS 220/1 ff.
145. Village of Long Grove v. Village of Kildeer, 146 Ill. App. 3d 979, 497 N.E.2d 319 (1986), review denied by Ill. Sup. Ct.
146. Village of Lisle v. Village of Woodridge, 192 Ill. App. 568, 548 N.E.2d 1337 (1989).
147. P.A. 85-784, Section 1 (1987), amending 65 ILCS 5/11-12-9.
148. County of Wabash v. Partee, 241 Ill. App. 3d 59, 608 N.E.2d 674 (1993).
149. Opinion S-684 (1974 Ops. Atty. Gen., p. 60).
150. Opinion S-1485 (1980 Ops. Atty. Gen., p. 60).
151. Opinion S-1161 (1976 Ops. Atty. Gen., p. 303).
152. Opinion S-1217 (1977 Ops. Atty. Gen., p. 31).
153. Opinion S-1210 (1977 Ops. Atty. Gen., p. 22).

154. Opinion S-1128 (1976 Ops. Atty. Gen., p. 245).
155. Opinion S-1183 (1976 Ops. Atty. Gen., p. 339).
156. Ross v. United States, 910 F.2d 1422 at 1428-29 (7th Cir. 1990). The United States was included as a defendant because the boy fell off an Army Corps of Engineers breakwater.
157. Hoogasian v. Regional Transp. Auth., 58 Ill. 2d 117, 317 N.E.2d 534 (1974), app. dis. 419 U.S. 988.
158. 10 ILCS 5/28-7.
159. See 65 ILCS 5/7-2-1 ff. (municipalities); 75 ILCS 15/2-13 (library districts); 70 ILCS 1205/3-11 (park districts); 605 ILCS 5/6-108 (township road districts).
160. Opinion 81-035 (1981 Ops. Atty. Gen., p. 86).

Article 8. Finance

1. People ex rel. City of Urbana v. Paley, 68 Ill. 2d 62, 368 N.E.2d 915 (1977).
2. People ex rel. City of Salem v. McMackin, 53 Ill. 2d 347, 291 N.E.2d 807 (1972).
3. People ex rel. Ogilvie v. Lewis, 49 Ill. 2d 476, 274 N.E.2d 87 (1971).
4. Friends of the Parks v. Chicago Park Dist., 203 Ill. 2d 312, 786 N.E.2d 161 (2003).
5. In re Marriage of Lappe, 176 Ill. 2d 414, 680 N.E.2d 380 (1997).
6. Board of Education, Sch. Dist. No. 142 v. Bakalis, 54 Ill. 2d 448, 299 N.E.2d 737 (1973).
7. People ex rel. City of Urbana v. Paley, 68 Ill. 2d 62, 368 N.E.2d 915 (1977); Friends of the Parks v. Chicago Park Dist., 203 Ill. 2d 312, 786 N.E.2d 161 (2003).
8. Wright v. City of Danville, 174 Ill. 2d 391, 675 N.E.2d 110 (1996).
9. Opinions S-691 (1974 Ops. Atty. Gen., p. 64) and S-1288 (1977 Ops. Atty. Gen., p. 151).
10. Opinions S-1046 (1976 Ops. Atty. Gen., p. 86) and S-1058 (1976 Ops. Atty. Gen., p. 117).
11. Opinion S-941 (1975 Ops. Atty. Gen., p. 189).
12. Opinion S-960 (1975 Ops. Atty. Gen., p. 212).
13. Record of Proceedings, Sixth Illinois Constitutional Convention, vol. VII, p. 2011 (Proposal No. 1 of Revenue and Finance Committee).
14. 30 ILCS 105/30.
15. People ex rel. Ogilvie v. Lewis, 49 Ill. 2d 476, 274 N.E.2d 87 (1971).
16. City of Springfield v. Allphin, 74 Ill. 2d 117, 384 N.E.2d 310 (1978).
17. See 745 ILCS 5/1. The Court of Claims Act is in 705 ILCS 505/1 ff.
18. 5 ILCS 140/1 ff.
19. People ex rel. Recktenwald v. Janura, 59 Ill. App. 3d 143, 376 N.E.2d 22 (1978).
20. Mid-America Television Co. v. Peoria Housing Auth., 93 Ill. App. 3d 314, 417 N.E.2d 210 (1981).
21. 15 ILCS 20/38.
22. 15 ILCS 20/38.1.
23. Duties of the Bureau of the Budget are set forth in 20 ILCS 3005/0.01 ff.
24. People ex rel. Ogilvie v. Lewis, 49 Ill. 2d 476, 274 N.E.2d 87 (1971).
25. Opinion S-1134 (1976 Ops. Atty. Gen., p. 253).
26. Graham v. Illinois State Toll Highway Authority, 182 Ill. 2d 287, 695 N.E.2d 360 (1998).
27. See the discussion and cases cited in People ex rel. Kirk v. Lindberg, 59 Ill. 2d 38 at 40, 320 N.E.2d 17 at 18 (1974).
28. See, for example, 20 ILCS 625/2 (federal community services block grants and other grants directed at community agencies); 305 ILCS 5/12-5 (public assistance programs); 415 ILCS 5/4(k) (environmental protection grants);
29. County of Cook v. Ogilvie, 50 Ill. 2d 379, 280 N.E.2d 224 (1972).
30. Record of Proceedings, Sixth Illinois Constitutional Convention, vol. VII, p. 2037 (Proposal No. 1 of Revenue and Finance Committee).
31. 30 ILCS 5/1-1 ff.
32. 30 ILCS 5/3-1 ff.
33. 30 ILCS 5/3-3A. See also 31 U.S. Code Section 7502.
34. See Chicago Bar Ass'n v. Cronson, 183 Ill. App. 3d 710, 539 N.E.2d 327 (1989), review denied by Illinois Supreme Court 127 Ill. 2d 613, 545 N.E.2d 106, cert. den. 493 U.S. 1057.
35. Opinion 82-022 (1982 Ops. Atty. Gen., p. 57).
36. See Auditor General, 1994 Annual Report (March 1995), p. 24.
37. 25 ILCS 150/0.01 ff.
38. 15 ILCS 425/1.
39. 65 ILCS 5/8-8-1 ff.
40. 55 ILCS 5/6-31001 ff.
41. 50 ILCS 310/0.01 ff.

Article 9. Revenue

1. See Berry v. Costello, 62 Ill. 2d 342, 341 N.E.2d 709 (1976); Hoffman v. Clark, 69 Ill. 2d 402, 372 N.E.2d 74 (1977).
2. Day v. Regional Transp. Auth., 66 Ill. 2d 533, 363 N.E.2d 829 (1977).
3. Polich v. Chicago School Finance Auth., 79 Ill. 2d 188, 402 N.E.2d 247 (1980).
4. Rozner v. Korshak, 55 Ill. 2d 430, 303 N.E.2d 389 (1973) and Head v. Korshak, 62 Ill. 2d 226, 341 N.E.2d 706 (1976), cert. den. 425 U.S. 993.
5. Paper Supply Co. v. City of Chicago, 57 Ill. 2d 553, 317 N.E.2d 3 (1974).
6. S. Bloom, Inc. v. Mahin, 61 Ill. 2d 70, 329 N.E.2d 213 (1975).
7. Williams v. City of Chicago, 66 Ill. 2d 423, 362 N.E.2d 1030 (1977), cert. den. 434 U.S. 924.
8. Adler v. Illinois Bell Tel. Co., 72 Ill. 2d 295, 381 N.E.2d 294 (1978).
9. Walter Peckat Co. v. Regional Transp. Auth., 81 Ill. 2d 221, 407 N.E.2d 28 (1980).
10. Geja's Cafe v. Metropolitan Pier & Exposition Auth., 153 Ill. 2d 239, 606 N.E.2d 1212 (1992).
11. Warren Realty Co. v. Illinois Dept. of Revenue, 62 Ill. App. 3d 450, 379 N.E.2d 100 (1978), review denied by Ill. Sup. Ct.
12. Fiorito v. Jones, 39 Ill. 2d 531, 236 N.E.2d 698 (1968).
13. Commercial Nat'l Bank v. City of Chicago, 89 Ill. 2d 45, 432 N.E.2d 227 (1982).

14. Federated Distributors, Inc. v. Johnson, 125 Ill. 2d 1, 530 N.E.2d 501 (1988).
15. Warren Realty Co. v. Illinois Dept. of Revenue, 62 Ill. App. 2d 450, 379 N.E.2d 100 (1978), review denied by Ill. Sup. Ct.
16. People ex rel. Kutner v. Cullerton, 58 Ill. 2d 266, 319 N.E.2d 55 (1974).
17. 35 ILCS 200/9-150 ff.
18. Hoffmann v. Clark, 69 Ill. 2d 402, 372 N.E.2d 74 (1977). The statute was Ill. Rev. Stat. through 1981, ch. 120, secs. 501a-1 through 501a-3, repealed by P.A. 83-347 (1983). See now 35 ILCS 200/10-110 ff.
19. See M.F.M. Corp. v. Cullerton, 16 Ill. App. 3d 681, 306 N.E.2d 505 (1973); Stephens v. State Property Tax Appeal Bd., 42 Ill. App. 3d 550, 356 N.E.2d 355 (1976). See also the case involving disparity between taxing districts discussed under Section 7.
20. Client Follow-Up Co. v. Hynes, 75 Ill. 2d 208, 390 N.E.2d 847 (1979).
21. The act was designated as P.A. 81-1st Special Session-1 (1979).
22. Continental Illinois Nat'l Bank & Trust Co. v. Zagel, 78 Ill. 2d 387, 401 N.E.2d 491 (1979).
23. See 30 ILCS 115/12.
24. 35 ILCS 515/1 ff.
25. Berry v. Costello, 62 Ill. 2d 342, 341 N.E.2d 709 (1976).
26. Hoffman v. Lehnhausen, 48 Ill. 2d 323, 269 N.E.2d 465 (1971); Christian Action Ministry v. Department of Local Gov't Affairs, 74 Ill. 2d 51, 383 N.E.2d 958 (1978).
27. City of Chicago v. Illinois Department of Revenue, 147 Ill. 2d 484, 590 N.E.2d 478 (1992).
28. Small v. Pangle, 60 Ill. 2d 510, 328 N.E.2d 285 (1975), app. dis., cert. den. 423 U.S. 918; Friendship Manor of Branch of King's Daughters and Sons, Inc. v. Department of Rev., 91 Ill. App. 3d 91, 414 N.E.2d 525 (1980).
29. In re Guilford Hope Grange, 52 Ill. App. 3d 718, 367 N.E.2d 1021 (1977).
30. Central States Threshermen's Reunion, Inc. v. Department of Revenue, 219 Ill. App. 3d 26, 578 N.E.2d 1347 (1991).
31. Doran v. Cullerton, 51 Ill. 2d 553, 283 N.E.2d 865 (1972). The exemption law is 35 ILCS 200/15-170.
32. Proviso Twp. High Sch. Dist. No. 209 v. Hynes, 84 Ill. 2d 229, 417 N.E.2d 1290 (1980). The exemption law is 35 ILCS 200/15-175.
33. McKenzie v. Johnson, 98 Ill. 2d 87, 456 N.E.2d 73 (1983).
34. Knox College v. Department of Revenue, 169 Ill. App. 3d 832, 523 N.E.2d 1312 (1988), review denied by Ill. Sup. Ct.
35. People ex rel. County Collector v. Northwestern Univ., 51 Ill. 2d 131, 281 N.E.2d 334 (1972), cert. den. 409 U.S. 852.
36. 35 ILCS 200/9-195.
37. Nabisco, Inc. v. Korzen, 68 Ill. 2d 451, 369 N.E.2d 829 (1977), app. dis. 435 U.S. 1005.
38. 35 ILCS 200/18-155 and 200/18-160.
39. People ex rel. Skidmore v. Anderson, 56 Ill. 2d 334, 307 N.E.2d 391 (1974).
40. The constitutional amendment was proposed by 81st General Assembly Senate Joint Resolution 56.
41. The amendment was proposed by 86th General Assembly House Joint Resolution—Constitutional Amendment 4.
42. Ill. Const. 1870, art. 4, Section 18.
43. Hoogasian v. Regional Transp. Auth., 58 Ill. 2d 117, 317 N.E.2d 534 (1974), app. dis. 419 U.S. 988; Day v. Regional Transp. Auth., 66 Ill. 2d 533, 363 N.E.2d 829 (1977). The Act is in 70 ILCS 3615/1.01 ff.
44. 30 ILCS 340/1 as amended by P.A. 88-669, Section 90-1 (1994).
45. 30 ILCS 340/1.1, added by P.A. 88-669, Section 90-1 (1994).

Article 10. Education

1. Pierce v. Board of Ed. of Chicago, 69 Ill. 2d 89, 370 N.E.2d 535 (1977).
2. Elliot v. Board of Ed. of Chicago, 64 Ill. App. 3d 229, 380 N.E.2d 1137 (1978), review den. by Ill. Sup. Ct.
3. Beck v. Board of Ed., Harlem Cons. Sch. Dist. No. 122, 63 Ill. 2d 10, 344 N.E.2d 440 (1976). The section allowing school districts to provide free textbooks if approved by referendum is 105 ILCS 5/28-14. Another section requires the State Board of Education to provide for the lending of textbooks and similar items on a state list to students in public and private schools (105 ILCS 5/18-17).
4. Blase v. State, 55 Ill. 2d 94, 302 N.E.2d 46 (1973).
5. Committee for Educational Rights v. Edgar, 174 Ill. 2d 1, 672 N.E.2d 1178 (1996).
6. Cronin v. Lindberg, 66 Ill. 2d 47, 360 N.E.2d 360 (1976).
7. Espinoza v. Board of Trustees, Community Coll. Dist. 508, 265 Ill. App. 3d 504, 632 N.E.2d 279 (1994).
8. 105 ILCS 5/1A-1 as amended by P.A. 93-1036 (2004).
9. People ex rel. Klinger v. Howlett, 56 Ill. 2d 1, 305 N.E.2d 129 (1973).
10. People ex. rel. Ring v. Board of Ed., Dist. 24, 245 Ill. 334, 92 N.E. 251 (1910).
11. School Dist. of Abington Twp. v. Schempp, 374 U.S. 203, 83 S. Ct. 1560 (1963).
12. People ex rel. Klinger v. Howlett, 56 Ill. 2d 1, 305 N.E.2d 129 (1973).
13. Board of Ed., Sch. Dist. No. 142 v. Bakalis, 54 Ill. 2d 448, 299 N.E.2d 737 (1973).
14. Toney v. Bower, 318 Ill. App. 3d 1194, 744 N.E.2d 351 (2001).
15. Cecrle v. Illinois Educational Facilities Auth., 52 Ill. 2d 312, 288 N.E.2d 399 (1972).

Article 11. Environment

1. 415 ILCS 5/1 ff.
2. 415 ILCS 10/1 ff., 15/1 ff., and 20/1 ff.
3. 415 ILCS 55/1 ff.
4. 225 ILCS 715/1 ff. and 720/1.01 ff.
5. 415 ILCS 50/1 ff.
6. 415 ILCS 60/1 ff. and 65/1 ff.

7. Record of Proceedings, Sixth Illinois Constitutional Convention, vol. VI, p. 707 (Proposal No. 16 of General Government Committee).
8. Record of Proceedings, vol. VI, p. 703.
9. Record of Proceedings, vol. VI, p. 703.
10. Scattering Fork Drainage Dist. v. Ogilvie, 19 Ill. App. 3d 386 at 395, 311 N.E.2d 203 at 210 (1974).
11. City of Elgin v. County of Cook, 169 Ill. 2d 53, 660 N.E.2d 875 (1995).
12. Glisson v. City of Marion, 188 Ill. 2d 211, 720 N.E.2d 1034 (1999).
13. 415 ILCS 5/31(b). See Leahy, "Individual Legal Remedies Against Pollution in Illinois," Loyola Univ. L. J., vol. 3, p. 1 (1972).

Article 12. Militia

1. Record of Proceedings, Sixth Illinois Constitutional Convention, vol. VI, p. 463 (Proposal No. 2 of General Government Committee).
2. Act of June 3, 1916, 39 Stat. 197. Now, see generally 10 U.S. Code Section 311, and 32 U.S. Code secs. 101 ff.
3. See 20 ILCS 1805/1.01 ff., especially 1805/2.
4. Ill. Const. 1870, art. 12, Section 1.
5. See 32 U.S. Code secs. 101 ff.

Article 13. General Provisions

1. People ex rel. Keenan v. McGuane, 13 Ill. 2d 520 at 536, 150 N.E.2d 168 at 177 (1958), cert. den. 358 U.S. 828.
2. People ex rel. Keenan v. McGuane, 13 Ill. 2d 520 at 356, 150 N.E.2d 168 at 177 (1958); People ex rel. Taborski v. Illinois Appellate Court, First Dist., 50 Ill. 2d 336, 278 N.E.2d 796 (1972).
3. 10 ILCS 5/29-15. The repealed provision was Section 124-1 of the Code of Criminal Procedure of 1963, repealed by P.A. 84-1047 (1985).
4. 730 ILCS 5/3-3-8(d) and 5/5-5-5(b).
5. Coles v. Ryan, 91 Ill. App. 3d 382, 414 N.E.2d 932 (1980).
6. People ex rel. Symonds v. Gualano, 124 Ill. App. 2d 248, 260 N.E.2d 284 (1970).
7. 5 ILCS 420/1-101 ff. The classes of persons who must file statements are listed in 5 ILCS 420/4A-101, as amended by P.A. 88-605 (1994).
8. Stein v. Howlett, 52 Ill. 2d 570, 289 N.E.2d 409 (1972), app. dis. 412 U.S. 925.
9. Welch v. Johnson, 147 Ill. 2d 40, 588 N.E.2d 1119 (1992).
10. Illinois State Employees' Ass'n v. Walker, 57 Ill. 2d 512, 315 N.E.2d 9 (1974), cert. den. 419 U.S. 1058. The executive order, No. 73-4, was revoked and replaced by Executive Order No. 77-3 which requires disclosure statements from a partially different class of employees under the Governor. It is printed in Laws of Illinois, 81st General Assembly, 1979, vol. III, p. 5195.
11. Buettell v. Walker, 59 Ill. 2d 146, 319 N.E.2d 502 (1974).
12. Supreme Court Rules 61 to 71.
13. 5 ILCS 430/1-1 ff.
14. See Attorney General's Opinion S-1063 (1976 Ops. Atty. Gen., p. 129).
15. Molitor v. Kaneland Comm. Unit Dist. No. 302, 18 Ill. 2d 11, 163 N.E.2d 89 (1959), cert. den. 362 U.S. 968; Peters v. Bellinger, 22 Ill. App. 2d 105, 159 N.E.2d 528 (1959), reversed on another ground 19 Ill. 2d 367, 166 N.E.2d 581 (1960); Kitto v. Wattleworth, 24 Ill. App. 2d 484, 164 N.E.2d 817 (1960), review denied by Ill. Sup. Ct.
16. Ill. Const. 1870, art. 4, Section 26.
17. See Record of Proceedings, Sixth Illinois Constitutional Convention, vol. VI, pp. 650-660 (Proposal No. 15 of General Government Committee).
18. Record of Proceedings, vol. VI, pp. 677-79.
19. P.A. 77-1776 (1971); 745 ILCS 5/1.
20. 705 ILCS 505/8(d).
21. Hudgens v. Dean, 75 Ill. 2d 353, 388 N.E.2d 1242 (1979).
22. County of Cook v. Ogilvie, 50 Ill. 2d 379 at 383, 280 N.E.2d 224 at 226 (1972).
23. Currie v. Lao, 148 Ill. 2d 151, 592 N.E.2d 977 (1992).
24. Williamson Towing Co. v. State of Illinois, 534 F.2d 758 (7th Cir. 1976); Frances J. v. Wright, 19 F.3d 337 at 342-43 (7th Cir. 1994).
25. 745 ILCS 10/1-101 ff.
26. 740 ILCS 170/9.
27. First Finance Co. v. Pellum, 62 Ill. 2d 86, 338 N.E.2d 876 (1975).
28. Aurora Nat'l Bank v. Simpson, 118 Ill. App. 3d 392, 454 N.E.2d 1132 (1983).
29. McLorn v. City of East St. Louis, 105 Ill. App. 3d 148, 434 N.E.2d 44 (1982), review denied by Ill. Sup. Ct.
30. Estate of DeBow v. City of East St. Louis, 228 Ill. App. 3d 437, 592 N.E.2d 1137 (1992).
31. Peters v. City of Springfield, 57 Ill. 2d 142, 311 N.E.2d 107 (1974).
32. People ex rel. Illinois Federation of Teachers v. Lindberg, 60 Ill. 2d 266, 326 N.E.2d 749 (1975), cert. den. 423 U.S. 839; McNamee v. State of Illinois, 173 Ill. 2d 433, 672 N.E.2d 1159 (1996); People ex rel. Sklodowski v. State of Illinois, 182 Ill. 2d 220, 695 N.E.2d 374 (1998).
33. Kerner v. State Employees' Retirement System, 72 Ill. 2d 507, 382 N.E.2d 243 1978), cert. den. 441 U.S. 923. The provision to that effect in the State Employees' Retirement System article is in 40 ILCS 5/14-149; parallel provisions are in other articles of the Pension Code.
34. Felt v. Board of Trustees of Judges' Retirement System, 107 Ill. 2d 158, 481 N.E.2d 698 (1985).
35. Buddell v. Board of Trustees of State University Retirement System, 118 Ill. 2d 99, 514 N.E.2d 184 (1987).
36. Peifer v. Board of Trustees of Police Pension Fund of Winnetka, 35 Ill. App. 3d 383, 342 N.E.2d 131 (1976); Kraus v. Board of Trustees of Police Pension Fund of Niles, 72 Ill. App. 3d 833, 390 N.E.2d 1281 (1979).

37. Ill. Rev. Stat. through 1973, ch. 48, subSection 138.1(b)(1).
38. P.A. 78-1141 (1974).
39. P.A. 80-903 (1977).
40. Taft v. Board of Trustees, Police Pension Fund of Winthrop Harbor, 133 Ill. App. 3d 566, 479 N.E.2d 31 (1985), review denied by Ill. Sup. Ct.; Gualano v. City of Des Plaines, 139 Ill. App. 3d 456, 487 N.E.2d 1050 (1985); Greves v. Firemen's Pension Fund of Blue Island, 147 Ill. App. 3d 956, 498 N.E.2d 618 (1986); Carr v. Board of Trustees, Peoria Police Pension Fund, 158 Ill. App. 3d 7, 511 N.E.2d 142 (1987); Fenton v. Board of Trustees, City of Murphysboro, 203 Ill. App. 3d 714, 561 N.E.2d 105 (1990); Schroeder v. Morton Grove Police Pension Bd., 219 Ill. App. 3d 697, 579 N.E.2d 997 (1991), review denied by Ill. Sup. Ct.
41. Sellards v. Board of Trustees, Rolling Meadows Firemen's Pension Fund, 133 Ill. App. 3d 415, 478 N.E.2d 1123 (1985).
42. U.S. Const., art. I, Section 10, cl. 1.
43. Ill. Const. 1870, art. 11, Section 3.
44. Roanoke Agency, Inc. v. Edgar, 101 Ill. 2d 315, 461 N.E.2d 1365 (1984).
45. 30 ILCS 415/1 ff.
46. 70 ILCS 3615/1.01 ff.
47. People ex rel. Ogilvie v. Lewis, 49 Ill. 2d 476, 274 N.E.2d 87 (1971); Hoogasian v. Regional Transp. Auth., 58 Ill. 2d 117, 317 N.E.2d 534 (1974), app. dis. 419 U.S. 988; Day v. Regional Transp. Auth., 66 Ill. 2d 533, 363 N.E.2d 829 (1977).
48. Ill. Const. 1870, art. 11, Section 5.
49. People ex rel. Lignoul v. City of Chicago, 67 Ill. 2d 480, 368 N.E.2d 100 (1977).
50. 205 ILCS 5/5(15). The act allowing unlimited branch banking (P.A. 88-4 (1993)) passed by 46-2 in the Senate and 98-15 in the House (1993 final Legislative Synopsis and Digest entry for S.B. 598).

Article 14. Constitutional Revision

1. The proposition was sent to the voters under this provision and as called for in 85th General Assembly Senate Joint Resolution 127 (1988). See also 5 ILCS 25/1.
2. 5 ILCS 20/0.01 ff.
3. 81st General Assembly SJR 56 (1979-80).
4. 82nd General Assembly SJR 36 (1981-82).
5. 84th General Assembly SJR 22 (1985-86).
6. 85th General Assembly House Joint Resolution—Constitutional Amendment 1 (1987-1988).
7. 86th General Assembly HJR—CA 4 (1989-1990).
8. 87th General Assembly HJR—CA 28 (1992).
9. 88th General Assembly SJR 123 (1994).
10. 88th General Assembly HJR—CA 35 (1994)
11. 78th General Assembly HJR—CA 7 (1973).
12. 80th General Assembly HJR—CA 21 (1977-78).
13. 80th General Assembly HJR—CA 29 (1977-78).
14. 83rd General Assembly HJR—CA 2 (1983-84).
15. 84th General Assembly SJR 11 (1985-86).
16. 85th General Assembly HJR—CA 13 (1987-88).
17. 87th General Assembly SJR 130 (1992).
18. Record of Proceedings, Sixth Illinois Constitutional Convention, vol. II, p. 587 (roll call on Suffrage and Constitution Amending Committee Minority Proposal No. 1A, printed in vol. VII, pp. 2309-10).
19. Coalition for Political Honesty v. State Board of Elections, 65 Ill. 2d 453, 359 N.E.2d 138 (1976).
20. Coalition for Political Honesty v. State Board of Elections, 83 Ill. 2d 236, 415 N.E.2d 368 (1980).
21. Lousin v. State Board of Elections, 108 Ill. App. 3d 496, 438 N.E.2d 1241 (1982), review denied by Ill. Sup. Ct.
22. Chicago Bar Ass'n v. State Board of Elections, 137 Ill. 2d 394, 561 N.E.2d 50 (1990).
23. Chicago Bar Ass'n v. Illinois State Board of Elections, 161 Ill. 2d 502, 641 N.E.2d 525 (1994).
24. Opinions S-455 (1972 Ops. Atty. Gen., p. 104) and S-456 (1972 Ops. Atty. Gen., p. 112), which are essentially identical. See also Opinion S-571 (1973 Ops. Atty. Gen., p. 36).
25. Dyer v. Blair, 390 F. Supp. 1291 (N.D. Ill. 1975) (3-judge court).
26. Opinions S-455 (1972 Ops. Atty. Gen., p. 104) and S-456 (1972 Ops. Atty. Gen., p. 112).

Transition Schedule

1. Roanoke Agency, Inc. v. Edgar, 101 Ill. 2d 315, 461 N.E.2d 1365 (1984), review denied by Ill. Sup. Ct.
2. Chavin v. General Employment Enterprises, Inc., 222 Ill. App. 3d 398, 584 N.E.2d 147 (1992), review denied by Ill. Sup. Ct.
3. 820 ILCS 305/19(f)(1).
4. Yonikus v. Industrial Commission, 228 Ill. App. 3d 333, 591 N.E.2d 890 (1992), review denied by Ill. Sup. Ct.

INDEX TO CONSTITUTIONAL TEXT

(Boldfaced numbers list the page containing the *beginning* of each constitutional provision (section or subsection) that is cited here. Where two or more pages are given for a single constitutional provision, they reflect both it and the commentary accompanying it.)